



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

Case reference : **AB/LON/00BF/0C9/2017/0094**

Property : **30 Mill Green, London Road,
Mitcham, Surrey CR4 4JE**

Applicant : **Margaret Ofori Dwamenah and
Thomas Akyirem Dwamenah**

Representative : **South East Leasehold , solicitors**

Respondent : **The Mayor and Burgesses of the
London Borough of Sutton**

Representative : **South London Legal Partnership**

Type of application : **Section 91(2)(d) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge Amran Vance**

**Date of determination
and venue** : **19 June 2017 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **19 June 2017**

DECISION

Summary of the tribunal's decision

1. The tribunal determines that the section 60 statutory costs payable by the respondent to the applicants amount to **£1,332.80**.

Background

2. This is an application brought under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in respect of 30 Mill Green, London Road, Mitcham, Surrey CR4 4JE ("the Flat"). The tenants seek a determination of the reasonable costs payable by them under section 60(1) of the Act following service of a Notice of Claim to acquire a new lease of the Flat.
3. The tenants' leasehold interest in the Flat is under the terms of a lease dated 26 October 1992 granted for a term of 125 years from 24 June 1981 made between (1) The Mayor and Burgesses of the London Borough of Sutton and (2) Ranjith Gunatilleke and Rita Gunatilleke.
4. On or around 29 July 2016, the tenants, through their solicitor, made a claim to acquire a new lease of the Flat by way of a notice of claim under section 42 of the Act. The proposed premium was £2,000.
5. On 12 October 2016, the landlord's solicitors served a landlord's counter-notice under section 45 of the Act. In the counter-notice the applicant admitted that the tenants had, on the relevant date, the right to acquire a new lease for of the Flat, but rejected the proposals contained in the tenants' notice of claim and proposed a premium of £4,000.
6. The landlord now seeks its statutory costs payable by the tenants to the landlord under s.60 of the Act. On 11 April 2017 the tribunal received an application from the tenants seeking a determination of those costs.

7. The landlord seeks the following costs:

Valuation Fees	£574
Legal fees inc Land Registry Fees	£1,863

The statutory provisions

8. Section 60 of the Act provides:

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 the appropriate 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.

Directions and the schedule of costs

9. The tribunal issued its standard costs directions on 18 April 2017 providing for the landlord to send the tenants a schedule of costs for summary assessment including copies of the invoices substantiating the claimed costs and for the tenants to provide a statement of case and any other documents or reports on which reliance was placed.
10. The tribunal directed that it was content to determine the matter on the papers unless either party requested an oral hearing. No party requested a hearing and the application was determined on the papers on 19 June 2017.

The principles

11. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the

extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

12. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
13. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.
14. The tribunal has had regard to the comments of Professor Farrand QC in the decision relied upon by the applicant in *Daejan Investments Freehold Ltd v Parkside 78 Ltd* (LON/ENF/1005/03), in which, at paragraph 8, he stated:

“As a matter of principle, in the view of the Tribunal, leasehold enfranchisement 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 reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and

lawyers for a transaction and proceedings forced upon them. Parliament has indeed provided that this expenditure is recoverable, in effect, from tenant-purchasers subject only to the requirement of reasonableness...”.

The tribunal’s determination and reasons

15. The parties have agreed the hourly rate for the landlord’s surveyor at £74 per hour as well as the landlord’s solicitor at £165 per hour. The parties have also agreed some of the items sought in respect of both the valuer’s and solicitor’s costs. I set out below the parties representations in respect of the disputed items and my determination in respect of each item.

Valuer’s Costs

Receiving Claim, checking and acknowledging claim 0.75 hours

16. I agree with the tenants that the time spent is excessive given that the section 42 claim notice is only two pages long, in standard form. Further the solicitor has also claimed 0.5 hours for reviewing the claim notice. Administrative time spent “logging and setting up a file” is not recoverable as it is part of overheads. I consider that 18 minutes is reasonable for this work to include any advice given concerning the merits of serving a counter-notice.

Issue Instructions to legal for s.45 counter notice and recording data and times in monitoring system 0.75 hours

17. I agree with the tenants that the valuer’s costs of issuing instructions to the legal team to serve a counter-notice are not costs of and incidental to the valuation of the Flat and are not recoverable under section 60(1)(b). The landlord states that these costs must be allowed as otherwise the council’s solicitors would not be able to prepare the

counter notice. However, the question of whether or not to serve a counter notice is one for the council and not the valuer.

Negotiations on Premium 2.75 hours

18. The landlord states that these costs were incurred because of the unrealistic premium proposed by the tenants of £2,000 whereas settlement was reached at £3,300. However, I agree with the applicants that costs incurred in negotiation are not costs of and incidental to the valuation of the Flat and are not recoverable under section 60(1)(b). I disallow the item in its entirety.

Notify Council solicitor on revised premium agreed 0.25 hours

19. The landlord states that these costs had to be incurred in order for the council's solicitors to prepare the draft lease. I do not agree and consider that these are not costs of and incidental to the valuation of the Flat and are not recoverable under section 60(1)(b). I disallow the item in its entirety.

Receipt of Completion Papers; advising client of completion and updating records (1.5 hours)

20. The landlord asserts that there is a need to update records in other sections of the council about the new lease terms to facilitate proper management of the council's estate. However, again, I agree with the tenants that these are not costs of and incidental to the valuation of the Flat and are not recoverable under section 60(1)(b). I disallow the item in its entirety.

Preparation of new lease plan if required (yet to happen) 1hour

21. The tenants state that no lease plan was prepared or included in the new lease. This is not disputed by the landlord who states that if no lease plan is required than no costs will be incurred. A copy of the new

lease dated 4 May 2017 has been provided and there is no lease plan included. I therefore disallow the item in its entirety.

Legal Costs

Review the tenant's notice of claim (0.5 hours)

22. I agree with the tenants that the time claimed is excessive for what is a two-page document in standard, non-complex form. I consider 12 minutes to be reasonable.

Emails to and from client and within legal department (2.8 hours)

23. The council states that there were a number of people who need to be contacted to "glean information" in respect of this matter including the council's valuer and housing stock management company as well as support staff to complete administrative tasks such as requesting deeds for the Flat.
24. I consider the time to be excessive for what appears to be an uncomplicated, low value, lease extension and in the absence of any breakdown for these costs, consider two hours to be reasonable.

Emails to and from the tenant's solicitors (1.2 hours)

25. I agree with the tenants that time spent perusing emails is not usually recoverable between the parties. In the absence of any breakdown, I consider that one hour is reasonable for this item.

Prepare Counter-notice (1 hour)

26. This is excessive. The counter-notice is a two-page document in standard form. I consider 18 minutes to be reasonable for this item.

Prepare lease (2 hours)

27. I agree with the tenants that the time claimed is excessive. Aside from the front page, index and execution pages it comprises 7 pages. I consider 1.2 hours to be reasonable.

Prepare Completion Statement (0.5 hours)

28. The time spent is excessive. The completion statement is one page long and contains four entries. I consider 18 minutes to be reasonable.

File Notes (0.4 hours)

29. The tenants argue that this is an internal administrative task and not a cost recoverable under section 60(1)(a) or (c). The landlord has explained that this item refers to the recording of relevant telephone conversations in a file note. I consider such work can amount to costs of or incidental to investigation reasonably undertaken of the tenants' right to a new lease or the grant of a new lease. The landlord has not explained which telephone conversations were recorded but, on balance, I accept that the sum claimed is reasonable

Prepare completion memo (0.5 hours)

30. I do not accept the tenants' submission that this is a purely administrative task, I consider that just as preparation of the completion statement falls within the ambit of section 60 costs, so too does notifying the council that completion had taken place as costs incidental to the grant of a new lease. I consider 18 minutes to be reasonable for the costs of doing so.

File Closure (1 hour)

31. I agree with the tenants that the work carried out was administrative internal work and that the cost is not recoverable under section 60(1)(a) or (c). I disallow it in its entirety.

Costs Payable

32. The total amount of time disallowed above in respect of the valuer's costs amounts to 7 hours and the total valuation costs that it is reasonable for the tenants to pay is therefore £162.80.
33. The total amount of time disallowed above in respect of legal costs amounts to 4.2 hours and the total legal costs that it is reasonable for the tenants to pay is therefore £1,170. I note that there appears to be an arithmetical error in the schedule of costs provided by the applicant in that the time spent does not equate to 11 hours.
34. The total legal costs payable by the respondent is therefore **£1,332.80**.

Name: Amran Vance

Date: 19 June 2017

ANNEX 1 - 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.