



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

Case reference : **LON/00AH/LCP/2021/0007**

Property : **4 Woodcote Valley Road, Purley, Surrey
CR8 3AG**

Applicant : **Gateway Properties Limited**

Representative : **Wallace LLP**

Respondent : **Woodcote Grange RTM Company
Limited**

Representative : **Prime Property Management**

Type of application : **Costs under s88(4) Commonhold and
Leasehold Reform Act 2002**

Tribunal member(s) : **Judge Dutton
Mr C Gowman MCIEH MCMI BSc**

Date of decision : **1 September 2021**

HMCTS code : **P: PAPERREMOTE**

DECISION

Covid-19 pandemic: description of hearing

This has been a 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 it was not practicable and no-one requested the same and all issues could be determined on paper. The

documents that the Tribunal were referred to are in a bundle of 162 pages, the contents of which have been noted.

Decisions of the Tribunal

- (1) The tribunal determines that the costs payable by the Respondent to the Applicant are £3,115.44, such costs to be paid within 28 days.**

The application.

1. This was an application by the applicant landlord Gateway Properties Limited (GPL) for a determination as to the costs payable by the respondent RTM company Woodcote Grange RTM Company Limited (WG) under the provisions of section 88 of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. The claim for costs arises from a Claim Notice served by WG on GPL dated 18 May 2020. This resulted in GPL serving a Counter Notice dated 23 June 2020, within the permitted time, admitting that WG was entitled to acquire the right to manage the premises 4 Woodcote Vale Road, Purley Surrey CR8 3AG (the Premises).
3. It was not, it seems, possible for the parties to agree the costs and accordingly GPL issued the application dated 31 March 2021. Directions were issued on 24 May 2021 indicating that unless objected to the matter would be dealt with as a paper determination. The directions were complied with, and the case came before us for determination on 1 September 2021

The law

4. The relevant provisions of the Act are referred to in the decision below.

The Evidence

5. In the papers before us we had the applicant's statement of costs dated 4 June 2021, the respondent's submissions dated 9 July 2021 and the applicant's response dated 22 July 2021. We have carefully noted the contents of each.
6. The applicant's statement of costs is, in essence, a spread sheet setting out the tasks undertaken in the period 22 May 2020 to, it is assumed, 27 January 2021, although it, we think, erroneously refers to 2020. This sets out a total claim inclusive of VAT and disbursements of £4253.04. It would appear that some 9 hours of assistant solicitor time has been

incurred at an hourly rate of £385. There is evidence of the disbursements incurred.

7. The response on behalf of WG is made by Prime Management (PS) Limited. The response alleges that the costs are '*grossly excessive*' and '*unreasonable*'. The basis of the objects are that the hourly rates sought are too high and that there is no justification to use Central London solicitors. In addition, it is averred that a lower grade fee earner could have been employed for some of the tasks. The rate of £250 per hour had been applied across the board. It is said that there is nothing complex about the application and that time has been charged for attempting to negotiate with WG, which is not chargeable. The submission puts forward an offer of £1,154, including VAT. It is assumed that the disbursements are not in dispute.
8. Accompanying this short submission is the Schedule of costs produced by Wallace LLP dated 4 June 2021 to which the respondent has attached comments. A number of matters reflect the differing views on the hourly rate but do not challenge the time spent. Unfortunately, neither party produced a schedule that we could complete.
9. In addition to the challenge to the hourly rate a challenge is made on the basis that "*This seems to be an exercise in countless emails/attendance to the client/RTM in an effort to incur fees*". There then follow a number of responses which state "*Not agreed. The RTM requested information on the charges, incurring further charges for this is unreasonable. The RTM could have chosen to force the matter to FTT in which case this information would have been provided for no fee*".
10. In response Wallace LLP produced a Statement of costs dated 22 July 2021 running to some 12 pages. Under the heading 'Basis of Charging' we are told that the work was undertaken by an Assistant Solicitor (Grade A) at the hourly rate of £385. The Statement confirms that an offer to settle at £3,000 plus VAT and disbursements was rejected by WG. There is a heading General Response which seeks to justify the instruction of Wallace LLP, that the works did not involve a partner at the firm and that the provisions of the Act are complex and require an experienced fee earner.
11. Under the heading 'Particularised Response' the allegations concerning the unnecessary incurring of fees is addressed, as is the use of Central London Solicitors and the standard of fee earner and the hourly rate. We have noted all that is said. The Statement then went to address the appropriate charges to be recovered in respect of the supply of information and that those costs fell within the provisions of s88 of the Act.

Findings

12. The first matter we address is the hourly rate charged. S88(2) is relevant, which says as follows:

2)Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only 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.

13. We accept the submission made on behalf of GPL that Wallace LLP are their solicitors. GPL are entitled to utilise the services of solicitors with the requisite skills to ensure their position is preserved. We do not have any evidence in the form of terms of engagement, nor has the schedule of costs been signed by anyone from Wallace LLP as one would expect to see on an application for the Summary Assessment of costs. However, we accept the rate charged is one that GPL would be required to pay if they were to be incurred by that company. Accordingly, we have used the rate of £385 per hour throughout our assessment.
14. We find that it is without evidence to suggest that Wallace LLP had embarked upon an exercise to inflate the costs. We do accept that some emails were not required and that some items of work could have been approached differently, which would have reduced the costs and we have reflected that. Here the provision of a schedule that we could complete would have assisted. The best we can do is proceed by date of the task undertaken.
15. The work undertaken in the period 22 May 2020 to 26 May 2020 are disputed only on the ground that the hourly rate is too high. Those costs are therefore allowed.
16. On 19 June 2020 a charge of £308 is claimed and only disputed on the hourly rate and therefore **£308 is allowed**. Also, on the 19 June a charge of £192.50 is made to determine whether the Premises were detached. It seems to us that a telephone call to the client would have confirmed so would only allow **£38.50** as against £192.50 claimed.
17. The consideration of documentation and preparing the Counter Notice on 19 June 2020 is disputed only as to the rate. The sum allowed is **£192.50**.
18. There then follows a series of challenges on the ground that the costs are excessive and intended to incur costs. This covers the period 19 June email at £38.50 (of which there are two) to 20 January 2021 (email). We do not consider it was necessary to send a separate email to

confirm service of documents by email during the Covid pandemic. This information could have been imparted when the Counter Notice was served. We therefore **disallow £38.50**. On 23 June the finalising of the Counter Notice is agreed but at the lower rate argued for. We allow the sum claimed of **£115.50**

19. On 7 July 2020 two emails were sent, when one would have sufficed, and the email of 7 August 2020 should have fallen within the time spent on 11 August reviewing details of contractors. We therefore disallow the costs of two emails in the sum of **£77**.
20. The time spent dealing with the Contractors under s 92, whilst we consider is recoverable seems high, given that the notices would have been in the same format, save for details of the contractor. We consider that one hour at the accepted rate should have been sufficient and therefore **disallow the sum of £385**.
21. On 12 August there is a charge of £77 for collating the information for which a charge of £385 has been allowed the day before. We consider that this charge should be disallowed as it would form part of the fee allowed above. Accordingly, **we disallow the sum of £77**.
22. On 13 August 2020 a charge is made for an email to the client, sending on a query from a contractor. We conclude that the simple step would have been to send the query from the contractor straight to the client and let them deal direct. We therefore **disallow one email of £38.50**.
23. We conclude that the emails from and including 16 September 2020 to 12 October 2020 (4 emails) are payable and **allow the sum of £154**. The email of 13 October seems unnecessary and should have been covered in the email the previous day. **We therefore disallow £38.50**. The emails of 20 and 21 January 2021 we find are appropriate and are recoverable in the sum **of £231**. Whether they were provided before proceedings or after would seem to matter little. We cannot see there is any duplication and agree with paragraph 39 and 40 of the applicants statement of case.
24. The fees claimed for the period 27 January 2021 are reasonable and the sum of **£192.50 is allowed**. As to the later works these would seem to flow from the proceedings before us and we do not consider they would be recoverable (88(3)) and therefore no sum is allowed.
25. To facilitate understanding of our decision we have attached a schedule setting out the sums claimed, the date and the amount we have allowed. The total sum we find that is due and owing is £3,115.44 including VAT, and the disbursements as claimed, as they do not appear to be in dispute.

Andrew Dutton

Name: Judge Dutton

Date: 1 September 2021

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).

Schedule of costs claimed and allowed

<u>Date</u>	<u>claimed £</u>	<u>allowed £</u>
22.5.20	462	462
26.5.20 (3 items)	154	154
19.6.20 (5 items)	770	577.50
23.6.20 (2 items)	154	154
7.7.20	77	38.50
11.8.20 (3 items)	847	462
12.8.20 (2 items)	77	38.50
13.8.20 (2 items)	77	38.50
16.9 - 12.10. (4 items)	154	154
13.10.20	38.50	0.00
20.1 – 21.1.21 (5 items)	231	231
27.1.21	192.50	192.50
TBA		<u>0.00</u>
Total costs allowed		2,502.50
VAT thereon at 20%		500.50
Disbursements		<u>112.44</u>
Total allowed		<u>£3,115.44</u>