



**16 Whaddon House  
William Mews  
London SW1X 9HG**

**Tel: 020 7235 9215  
Fax: 020 7235 2429  
Mobile: 07850 001039**

Phillipa Juul  
Caseworker  
Leasehold Valuation Tribunal  
10 Alfred Place  
London WC1E 7LR

02 December 2005

Ref: LON/NL/2889-2899/05

Dear Phillipa,

**Re: Northways Parade (11 flats)  
Leasehold Reform Housing and Urban Development Act 1993 –  
Costs Only**

I enclose the Tribunal's decision in the above case.

I would be grateful if you could add a front sheet before the decision is sent out to the parties.

Kind regards.

Yours sincerely,

  
**Miss Jane Dowell**

**FLATS 4, 11, 13, 19, 29, 41, 45, 59, 63, 85 AND 89  
NORTHWAYS PARADE, COLLEGE CRESCENT,  
SWISS COTTAGE, LONDON NW3 5DR**

**THE APPLICATION**

1. This is an application under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of costs incurred in connection with a new lease to be paid by the tenant. The costs that are disputed are those of the landlord only, the costs of the intermediate landlord having been agreed. The costs relate to eleven new leases for the flats listed above.

**THE LAW**

2. Section 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.

## **BACKGROUND**

- 3. The individual lessees served notices under section 42 of the Act on 8th December 2003. The landlord and intermediate landlord served counter notices on 27th February 2004. Subsequently an application to the Leasehold Valuation Tribunal for a determination of the premium to be paid for each lease and the terms of the lease was made. The Tribunal was informed by a letter dated 15th August 2005 that agreement had been reached and that the hearing fixed for 16th and 17th August 2005 should be vacated. However on the same date the parties asked for the matters to be re-listed for a determination of costs.

## **DIRECTIONS**

- 4. On 11th October 2005 directions were issued which required:
  - (1) The Respondent by 28th October 2005 to file with the Tribunal and serve on the Applicants written submissions containing a full breakdown and justification of all costs incurred in respect of this matter for which it is claimed the Applicants are liable and accompanied by documents relied on.
  - (2) The Applicants by 11th November 2005 to file with the Tribunal and serve on the Respondent any written submissions specifying which costs are challenged and why, accompanied by copy documents relied on.
- 5. The dates in these directions were varied on 21st October 2005 to 11th November 2005 and 18th November 2005.

## **DETERMINATION**

- 6. Both parties requested a determination without a hearing and the Tribunal met on 22nd November 2005 to determine the application.
- 7. The documents which the Tribunal considered were:
  - (1) Statement of costs of the landlord prepared by William Sturges and Co.
  - (2) 2nd November 2005 – letter from Marshall Ross and Prevezer to William Sturges and Co.
  - (3) 9th November 2005 – letter from William Sturges and Co to Marshall Ross and Prevezer.
  - (4) 9th November 2005 – letter from William Sturges and Co to Leasehold Valuation Tribunal.

- (5) 11th November 2005 – letter from Marshall Ross and Prevezer to William Sturges and Co.
  - (6) 17th November 2005 – letter from Langley Taylor, Chartered Surveyors, to William Sturges and Co.
  - (7) 18th November 2005 – letter from William Sturges and Co to Leasehold Valuation Tribunal.
8. In our view neither party satisfactorily complied with the directions. We did not have before us the written submissions specified which addressed the costs which are allowed under section 60 of the Act. In those circumstances our decision is based on the limited submissions presented to us together with our own knowledge and experience of costs matters.

#### **VALUERS' FEES UNDER SECTION 60(1)(b) OF THE ACT**

9. The landlord relied on an invoice of Langley Taylor, Chartered Surveyors, dated 21st October 2005 in the total sum of £6,300.94 including disbursements of £32.50 and VAT. The narrative gave a breakdown of the work carried out. A supplementary letter dated 17th November 2005 from Jennifer Ellis a partner in Langley Taylor explained that the work was carried out in 2003 by an associate. This letter gave no detail of the associate's qualifications.
10. The Applicants' objections to the valuers' fees were set out in a letter of 11th November 2005 from their solicitors. They submitted that twenty-one hours' work of almost identical valuations in which premiums due to the landlord ranged from £275 to £600 was excessive and challenged the need for a supervising partner. They did not put forward an alternative figure and requested the Tribunal determine the costs.

#### **DECISION – VALUERS' FEES**

11. We accept the hourly rate of £300 for a partner and £200 for an associate on the basis these rates were not challenged by the Applicants. We consider it is reasonable for a partner to supervise this work but consider one hour to be sufficient. We accept it was necessary and proper for the valuer to inspect all the flats in order to fulfil his professional duty to his client and we allow the time claimed of six hours for this work. However in our view researching comparables, considering a solicitor's report on the leases and preparing schedules should take 4.5 hours and preparation of the valuations should take no more than an average of 30 minutes per valuation totalling 5.5 hours.

12. Summary:

Partner at £300 - 1 hour at £300 per hour :	£ 300
Associate at £200 - 16 hours at £200 per hour :	£3,200
<b>TOTAL</b>	<b><u>£3,500</u></b>

The disbursements of £32.50 are allowed as there was no challenge but we comment that no description of the disbursement has been given. In summary the liability for each flat for valuers' fees is £321.14 exclusive of VAT.

## **LEGAL COSTS**

13. The Respondent's statement of costs listed work carried out between 1st January 2004 and 20th October 2005. The legal costs claimed under section 60 of the Act were £25,339.16 including disbursements and VAT. The hourly rates of the fee earners are set out in the statement.
14. The Applicants' solicitor's objections are set out in a letter from their solicitor dated 2nd November 2005. They confirmed that they deducted title and so this work did not have to be carried out by the landlord's solicitors. They offered a total of £3,550 plus VAT and disbursements.
15. The Respondent's solicitors responded to this in a letter dated 9th November 2005. They made a number of points about the complexity of the case, the need to apportion the premium, the delays caused by the Applicants in the progressing of the Tribunal proceedings and referred to increased correspondence.

## **DECISION – LEGAL COSTS**

16. We found it impossible to establish from the Respondent's statement of costs which costs were attributable to the items set out in section 60(1). No attempt had been made by the solicitors for both the Applicants and the Respondent to address this. However for the sake of clarity we reiterate that section 60(5) states that a tenant shall not be liable under this section for any costs which a party to any proceedings before a Leasehold Valuation Tribunal incurs in connection with the application for a new lease.

### **17. Hourly Rates**

The Respondent's solicitors did not produce a copy of their client care letter to show solicitors rates and/or costs agreed with their client. However the Applicants' solicitors did not raise this point. We consider it appropriate and reasonable for a partner, a Grade A fee earner, to carry out this work which is highly specialised and of great importance to the client. The hourly rate of £245 claimed is, in our view, reasonable.

## **WORK UNDER SECTION 60(1)(a) OF THE ACT**

18. This work includes "any investigation reasonably undertaken of a tenant's right to a new lease". The landlord's solicitor must consider the right of each Applicant to a new lease. Taking a broad view, this work includes considering the notices of claim, considering the lease, instructing a valuer, preparing counter notices and correspondence with the tenant's solicitor, intermediate landlord's solicitor, valuer and client. It does not include any work connected with negotiations or the Leasehold Valuation Tribunal. Our decision is based on the costs for each flat in accordance with the wording of section 60 and not a total sum for eleven flats.
19. We have no alternative but to take a broad brush approach because we have not been given a breakdown. Clearly there should be an allowance for economy of scale in this

case where there are eleven linked applications for extension of the leases all with the same landlord. We consider it reasonable to allow one hour's work for each notice served i.e. £245 per flat.

#### **WORK UNDER SECTION 60(1)(c)**

20. Costs incurred in connection with the grant of a new lease under section 42. This work does not include negotiations after the issue of an application to the Leasehold Valuation Tribunal. The Applicants refer to other cases where considerably lower costs have been claimed but did not produce any documentary evidence in support.
21. The points raised by William Sturges in their letter of 9th November 2005 are largely irrelevant. Correspondence in relation to the Leasehold Valuation Tribunal is specifically excluded under section 60(5) of the Act. The argument about the apportionment of the premium is rejected as this is clearly valuer's work and will be included in the valuers fee.
22. We have taken a global view of a reasonable sum for the work in connection with a grant of the lease on the basis of eleven linked applications. We consider that three hours is a reasonable fee to be paid in respect of the first lease rounded up to £750 and that two hours work for each of the other leases, rounded up to £500 is reasonable. This makes a total of £5,750 i.e. £522.73 per flat.
23. Summary

The summary of our decision is that the reasonable costs to be paid by the tenants in respect of each tenant's liability under section 60 is:

Valuers fees	:	£	321.14
Legal costs	:	£	767.73

TOTAL OF 11 FLATS:      £11,977.57

#### VAT

All figures we have referred to are exclusive of VAT. We have no jurisdiction to determine VAT matters which are a matter for HM Revenue and Customs. Our determination is exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable.

.....  
Jane Dowell  
Chairman

Dated the 2 day of November 2005