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Residential  
Property  
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**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION TO DETERMINE COSTS PAYABLE IN ACCORDANCE  
WITH SECTION 60 OF THE LEASEHOLD REFORM, HOUSING AND  
URBAN DEVELOPMENT ACT 1993**

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**Reference number:** LON/00BH/OC9/2007/0012

**Property:** Upper Maisonette, 24 Clementina Road,  
Leyton, London E10 7LS

**Applicant:** Daejan Estates Limited

**Respondent:** Ms I Ambrose

**Appearances:** For the Applicant:  
Ms S Bone, a solicitor with Wallace LLP

For the Respondent:  
Mr D Duval, a barrister instructed by Gilbert  
Turner Coomber, solicitors

**Tribunal members:** Mr A J Andrew  
Mr F W J James FRICS

**Application received:** 22 March 2007

**Directions:** 10 April 2007 and 26 April 2007

**Hearing:** 12 June 2007

**Decision:** 22 June 2007

## **DECISION**

1. The Respondent was liable to pay to the Applicant valuation costs of £1,145.63 inclusive of VAT pursuant to section 60(1)(b) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

## **BACKGROUND**

2. The Respondent applied for a new lease of the Property under Chapter 2 of the Act. She subsequently accepted that her claim notice dated 7 June 2006 was invalid and at the invitation of the Applicant served a second claim notice dated 1 September 2006.
3. In respect of the first claim notice the Applicant sought to recover legal costs of £1,264.68 (£1,061 plus VAT at 15% and HM Land Registry fees of £18) and a valuation fee of £1,762.50 (£1,500 plus VAT).

## **COST IN DISPUTE**

4. We were informed by Ms Bone that immediately before the hearing the Applicant's legal costs had been agreed at £750 plus VAT. Thus the only cost in dispute was the fee of the Applicant's valuers, Langley Taylor. Both Ms Bone and Mr Duval agreed to our determining the reasonableness of that fee notwithstanding the chairman's declared interest that he had previously, when in practice as a solicitor, instructed Langley Taylor on behalf of clients.
5. Mr Duval accepted that a reasonable valuation fee was payable and he objected only to the quantum of the fee claimed.
6. On the basis of Langley Taylor's account an associate had spent 5.25 hours at £200 per hour (£1,050) in completing the valuation whilst a partner had spent 1.5 hours at £300 per hour (£450) in supervising the associate's work.

7. Mr Duval considered that both the time spent and the hourly rates were excessive and concluded, without further elaboration, that a fee of £500 plus VAT was reasonable. In support of that conclusion he drew our attention to the fee of £411.25 (£350 plus VAT) charged by his client's valuer and to another LVT decision in which a fee of £750 had been reduced to £500 for a simple valuation.

### **Statutory provisions**

8. A tenant's liability for payment of the landlord's costs is governed by section 60 of the Act, the relevant provisions of which read as follows:

*"60(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 fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the 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 purpose of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any persons 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) & (4) - not relevant to an invalid notice*

*(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 purpose of this Chapter, any other landlord (as defined by section 40 (4)) or any third party to the tenant's lease."*

### **Reasons for our decision**

9. In answer to our questions Ms Bone acknowledged that the valuation fee was in reality a fixed fee charged by Langley Taylor for new lease valuations. We fully appreciated that work of this nature has been commoditised and is now commonly sold on the basis of a fixed fee. There was however no reliable evidence before us to demonstrate the reasonableness of the fixed fee in terms of the prevailing market. The Respondent's valuation fee was of little assistance without both the terms of engagement and detailed account, which were not put in evidence: it was, by any standards, extremely modest and indicated a "desk-top" valuation without inspection or detailed enquiry. We did not consider other LVT decisions of particular relevance: every tribunal decision turns upon its own facts and certainly such a determination could not be regarded as substantiating a market rate for new lease valuations.

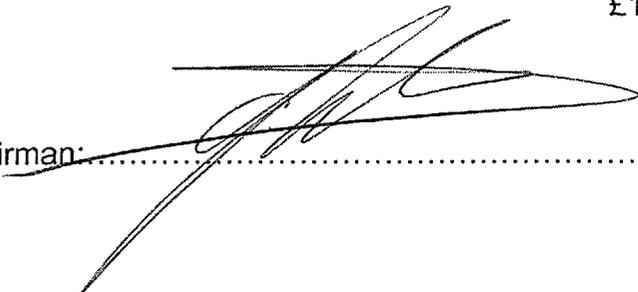
10. Consequently we were left with a little alternative but to consider the reasonableness of the valuation fee by reference to the time spent and the hourly rates applied. As to the former Ms Bone's acknowledgement that the valuation fee was a fixed fee rather called into a question the time said to have been spent. Her suggestion that the recorded time could have been "shaved down" to meet the fixed fee was speculative. It was

accepted that Langley Taylor's report included a two page calculation and we agreed that the two intermediate leasehold interests (both owned by the Applicant) would have increased the complexity of the calculation. However even allowing for such matters we agreed with Mr Duval that the time said to have been spent in the preparation of the valuation was excessive. The supervision time of 1.5 hours was reasonable in the context of supervising a junior associate (an issue to which we return when considering the hourly rates). The inspection should have taken no more than 2.5 hours and given the degree of supervision the report and calculation, much of which is derived from standard tables, should have taken no more than an hour to complete.

11. Turning to the hourly rates we accepted Ms Bone's primary justification that large institutional clients such as the Applicant preferred to instruct central London valuers with higher overheads. Equally we accepted that Ms Ellis (the supervising partner) is regarded as an expert in her field and although at the edge of what might be considered reasonable we took no objection to her hourly rate of £300. An hourly rate of £200 was however indicative of a highly experienced associate, which was incompatible with the claimed supervision time of 1.5 hours. Furthermore we were concerned that a split hourly rate had not been applied, in accordance with prevailing practice, to record the lower value of travelling time on inspection. Taking each of these factors into account we considered it reasonable to allow an hourly rate of £150 for the associate's time.

12. Consequently we considered a fee of £1,145.63 to be reasonable, calculated as follows:

1.5 hours at £300 per hour:	£450.00
3.5 hours at £150 per hour	<u>£525.00</u>
	£975.00
VAT and above 17.5%	<u>£170.63</u>
	£1,145.63

Chairman:  .....(A J Andrew)