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LVT 96/5

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

Our Ref: M/LRC 350

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 21(1) (ba)
OF THE LEASEHOLD REFORM ACT 1967

Applicant:	Mr S D Hawkins & Mrs C L Hawkins
Respondent:	Trustees of the Calthorpe Estate
Re:	7 Finlarigg Drive, Edgbaston, Birmingham, B15
Date of Tenants Notice:	5 November 2000
Application to Tribunal dated:	11 January 2002
Heard at:	The Panel Office
On:	Wednesday 3 April 2002
APPEARANCES:	
For the Applicant:	Mr Anthony Brunt FRICS of Messrs Anthony Brunt & Co
For the Respondent:	Mr M Dyke of Tyndallwoods Solicitors

Members of the Leasehold Valuation Tribunal:

Mr J R Bettinson (Chairman)
Mr S Berg
Mrs N Jukes

Date of Tribunals decision:

28 APR 2002

M/LRC.345-351
M/LRC

MIDLAND LEASEHOLD VALUATION TRIBUNAL
Re 1,2,3,7 and 9 Finlarigg Drive
34 Malcolmson Close
2 Hazeley Close
20 and 22 Mead Rise
all of Edgbaston, Birmingham

APPLICATION

This is an application pursuant to Section 21(1)(ba) Leasehold Reform Act 1947 by the Tenants of these properties to determine the reasonable costs of the Landlords, the Trustees of The Calthorpe Estate, to be paid by them in consequence of the enfranchisement of their respective properties. The last two properties listed were included with the agreement of all concerned although not the subject of the initial application.

HEARING

The applicant Tenants were represented by Mr.A.W. Brunt FRICS and the Landlords by Mr. M. Dyke of Messrs.Tyndallwoods Solicitors.

Mr. Brunt tabled a written submission to which he spoke. In the course of his practice he dealt with many cases of this kind and had recently noticed some increase in the level landlords' costs claimed, particularly legal costs – an average of £300 plus VAT and disbursements and in the case of one large Birmingham firm £400.

He filed a copy of a 'Freehold Purchase Form' recently issued by a property management company based in Edgware Middlesex who were offering a freehold at a price plus 'an additional legal/conveyancing fee of £352 inclusive of VAT which takes into account £23.50 already paid'

He was aware of the Lands Tribunal decision in Acton –v- Knott (LRA/34/2001) where a still higher award had been made but there had been no Tenant respondent and the decision did not bind this Tribunal in any event. The decision had not addressed the issue of whether the nature of the work justified the involvement of a legally qualified practitioner nor whether it was strictly incumbent upon the landlord to prepare the Transfer document. Many cases also needed to distinguish between those where the landlord delegated responsibility for checking the Notice and tenant's entitlement to their Solicitors and where they did not. He felt a fee of £275 was fair in these cases where the title was registered – reducing the responsibility of the Landlord's Solicitor, As to valuation, he had noticed a rise in the fees claimed from £250 to £300 plus VAT but where there had been no inspection of the property he felt £100 was a more reasonable fee. It was his understanding that a freeholder could not charge a fee for issuing a notice in

reply to the notice of leaseholder's claim. The valuation fees in these cases were claimed at £300. Mr. J.K.Wilson FRICS, a previous employee of the Trustees (but now working as a Consultant with their Surveyors) did not appear to have carried out internal inspections of the properties but presumably had a good working knowledge of the The Calthorpe Estate.

Mr. Dyke spoke to a 'skeleton argument' which he had filed. He referred to the previous decision of the Tribunal in re 9 Rodman Close (LVT 96/5) heard a year previously which he believed to have been wrongly decided. He assumed that as the following arguments, repeated from that decision, had not been contradicated they were correct. He presented a definition of reasonable costs, supported by Hague and by the dictionary. There could not be a tariff as every case had to be considered on its merits supported by an intelligible and fair mathematical calculation,. He presented such a calculation costed upon an hourly rate of £80 and totalling £462.67. He challenged the concept of a market in conveyancing fees (quoted examples of which were not comparable) and the 'trumping' of his argument by such means. Moreover, he suggested that by setting a tariff the Tribunal could be creating the market themselves. Cross examined he confirmed that certain steps in his calculation involved producing documents which in the normal course would have fallen to the responsibility of a Tenant's Solicitor (e.g. Statutory Declaration – and related LR Office copies – form of transfer etc). Although the work was repetitive, each case varied but he charged a standard fee and believed his manner of work actually saved costs. He set his hourly rate in the middle range of costs as the work was in the nature of a clerical process. He was not instructed to speak to the issue of valuation fees.

DECISION

The Tribunal has been assisted by the comprehensive nature of the representations made on behalf of both parties.

It is accepted that professional fees are moving upwards but not necessarily to the extent suggested to this Tribunal. The concept that we ourselves may be setting a market level is an interesting claim but on the basis of the fees being quoted in non-contentious cases that are being settled without reference to us we can find no evidence of this.

So far as Messrs. Tyndallwoods' costs are concerned it is accepted that their clients appear to delegate full responsibility for processing all claims to them and they are entitled to be paid additionally for that work but, as is admitted, this is largely a 'clerical process'. They have clearly developed a tailor made service of high quality for what is a large and continuous flow of work but by undertaking certain work which under normal conveyancing practice falls to a purchaser's Solicitor they must accept that they do so gratuitously and we are not convinced by their argument that overall this reduces work and saves money. Contrary to what was said in the 9 Rodman Close case, we do however accept that the existence of the Calthorpe Estate Management Scheme may be an additional title complication, although providing

individually photo copied versions of the scheme and plan appears costly in volume terms.

We have reached the conclusion that fair and reasonable costs payable by each of the respective Tenants as defined in Section 9(4) Leasehold Reform Act 1967 should be £350 (legal conveyancing and administrative) and 250 (valuation) both plus VAT and appropriate disbursements

JOHN BETTINSON
Chairman

29 April 2002