

451

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

BIR/OOCN/OAF/2003/0046

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON

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

Applicant: Mr M A Hill (leaseholder)

Respondents: Trustees of the Calthorpe Edgbaston Estate (freeholders)

Subject property: 279 Harborne Road
Edgbaston
Birmingham
B15 3JB

Date of tenants' notice: 5 February 2003

Application to the LVT: 28 March 2003

Hearing: 22 August 2003

Appearances:

For the applicant: Mr G Ritchie

For the respondents: Mr M Dyke
Mr J Willson BSc MRICS

Members of the LVT: Professor N P Gravells MA
Mr J Ravenhill FRICS
Miss B Granger

Date of determination:

Introduction

1 This is a decision on an application under section 21(1)(ba) of the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr M A Hill, leaseholder of 279 Harborne Road, Edgbaston, Birmingham B15 3JB ("the subject property"), for the determination of the reasonable costs payable under section 9(4) in connection with his exercising his right under the 1967 Act to acquire the freehold of the subject property.

2 Section 9(4) of the 1967 Act provides (so far as relevant):

"Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then ... there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters –

- (a) any investigation by the landlord of that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises of any part thereof or of any outstanding estate or interest therein;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the house and premises;

..."

3 The applicant held the subject property under a lease for a term of 99 years from 25 March 1966 at a ground rent of £45.00 per year. The applicant served on the respondent landlords a tenant's notice dated 5 February 2003, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; the respondents served on the applicant a counter-notice dated 14 March 2003, admitting the applicant's right to have the freehold; and the price payable was subsequently agreed between the parties.

4 The present application was made on 28 March 2003.

Hearing

5 The hearing was attended by Mr G Ritchie, of Margetts & Ritchie, representing the applicant leaseholder; and by Mr M Dyke, of Tyndallwoods, and Mr J Willson, of Lambert Smith Hampton, representing the respondent freeholders.

Representations of the parties

Legal costs

Submissions of the applicant leaseholder

- 6 Mr Ritchie's principal submission was that "reasonable costs" for the purposes of section 9(4) means those costs that are reasonably necessary to achieve the acquisition of the freehold by the leaseholder in accordance with the 1967 Act and that it was for the Tribunal, using its knowledge and experience, to assess what was reasonably necessary in the circumstances of each case. In support of his submission Mr Ritchie referred to a series of decisions of the Leasehold Valuation Tribunal during the past year.
- 7 Mr Ritchie submitted that reasonable legal costs in the present case would be £250.00 plus VAT (if applicable) plus reasonable disbursements (if any). In support of that figure, he again referred to the recent decisions of the Leasehold Valuation Tribunal and he also put in evidence a copy invoice from Eversheds.
- 8 Without prejudice to his principal submission, Mr Ritchie examined the schedule of work submitted by Mr Dyke; and he challenged a number of items on the ground that the work in question was unnecessary and/or that the time spent was "grossly exaggerated".
- 9 Finally, Mr Ritchie challenged the recoverability (as a disbursement) of the fee for the telegraphic transfer of the premium, arguing that the fee (£23.50) was disproportionate to the amount transferred (£1480.00) and that the amount should have been paid by cheque.

Submissions of the respondent freeholders

- 10 Mr Dyke submitted that, in determining reasonable costs, "the proper way to proceed" was through time costing; and, in support of that submission, he referred to the decision of the Lands Tribunal in *Acton v Knott* (LRA/34/2001) and to the recent decision of the Leasehold Valuation Tribunal in relation to properties at High Point, Edgbaston (BIR/CN/OC9/2003/0016).
- 11 In accordance with that approach, Mr Dyke submitted a schedule of work undertaken and to be undertaken in relation to the acquisition of the freehold by the applicant. Each item of work was timed by reference to six-minute time periods and the total time so calculated was 6 hours and 12 minutes. That time was charged at £80.00 per hour. Mr Dyke submitted that such an hourly rate was appropriate for an experienced conveyancing clerk working under (his) general supervision; and he referred to figures published by the Supreme Court Costs Service. The schedule thus indicated a total cost of £496.00; but Mr Dyke indicated that he was seeking to recover £450.00 plus VAT.
- 12 Mr Dyke also submitted that the freeholders were entitled to recover disbursements of £8.00 (for office copies) and £23.50 (telegraphic transfer fee). He argued that the latter fee was reasonably incurred since telegraphic transfer was now the accepted method of transferring funds in property transactions.

Valuation costs

Submissions of the applicant leaseholder

- 13 Mr Ritchie submitted that valuation costs incurred by the freeholder could only be recovered from the leaseholder if the valuation was "in accordance with the terms of the [1967] Act"; and he argued that the valuation carried out by Mr Willson on behalf of the respondent freeholders (which resulted in a proposed figure of £3750 for the premium payable for the freehold) could not have been "in accordance with the terms of the [1967] Act" since the parties subsequently agreed a premium of £1480. It followed, according to Mr Ritchie, that no valuation costs were recoverable from the leaseholder.

Submissions of the respondent freeholders

- 14 Mr Willson stated that he had prepared a valuation following the exchange of the tenant's Notice of Claim and the freeholders' Counter-notice but before the matter had been referred to the Leasehold Valuation Tribunal. He provided a schedule of work undertaken and submitted that the fee of £250.00 plus VAT was reasonable.

Determination of the Tribunal

- 15 The Tribunal gave full consideration to the evidence and submissions of the parties.
- 16 The Tribunal holds that, in determining the reasonable costs for the purposes of section 9(4) of the 1967 Act, the Tribunal must consider all the circumstances and determine what is reasonable to all the parties.

Legal costs

- 17 In the overwhelming majority of applications to the Leasehold Valuation Tribunal in relation to reasonable costs, the freeholder seeks to recover a particular amount without providing any breakdown of the amount claimed or any evidence of actual work undertaken and actual costs incurred. Moreover, as the history of *Acton v Knott* demonstrates, even when the freeholder pursues the issue of costs before the Lands Tribunal, the freeholder sometimes seems reluctant to provide the relevant evidence. In such cases, therefore, the Leasehold Valuation Tribunal can only approach the determination of reasonable costs in the manner advocated by Mr Ritchie.
- 18 On the other hand, where the freeholder provides evidence of work actually undertaken, the Tribunal does and must consider and give due weight to that evidence.
- 19 In the present case the schedule of work submitted by Mr Dyke indicates that a series of ordinary conveyancing steps have already been undertaken or are necessarily to be undertaken.
- 20 However, the crucial issue is the method of charging that is applied to the work undertaken. Mr Dyke has adopted the not uncommon practice of using six-minute time periods, every item of work being charged at six minutes each (or multiples of six minutes), irrespective of the actual time spent. Indeed, in cross-examination, Mr Dyke accepted that some items of work, timed on the schedule at six minutes, would have been completed in rather less than six minutes. Nonetheless, using the six-

minute time periods, the total time spent was calculated at over six hours to which Mr Dyke applied the hourly rate of £80.00.

- 21 In the view of the Tribunal, the method of charging adopted by Mr Dyke, if applied without qualification, has the clear potential to overstate to a considerable extent the time actually spent on the work for which the leaseholder is required to pay; and that would in effect endorse the recovery of costs beyond what is reasonable.
- 22 There is no evidence in the schedule that the work in the present case has involved any unusual or complex factors; nor did Mr Dyke make any submission to that effect. The Tribunal finds that the actual time spent on the work itemised in the schedule was probably no more than four hours.
- 23 The Tribunal finds that the hourly rate of £80.00 applied by Mr Dyke is reasonable for an experienced conveyancing clerk working under general supervision.
- 24 The Tribunal therefore determines the freeholders' reasonable legal costs recoverable from the leaseholder under section 9(4) at £320 plus VAT (if applicable).
- 25 The Tribunal further finds that the freeholders are entitled to recover disbursements of £8.00 (for office copies) and £23.50 (for telegraphic transfer). In respect of the latter item, the Tribunal finds that telegraphic transfer is now an accepted method of transferring funds in the context of property transactions.

Valuation costs

- 26 The Tribunal is not persuaded by Mr Ritchie's submission that the costs of the valuation undertaken by Mr Willson cannot be recovered on the ground that the valuation was not "in accordance with the terms of the Act". There is no such qualification in paragraph (e) of section 9(4), which refers to the (recovery of the) costs of "any valuation of the house and premises", provided that those costs are incurred in pursuance of the leaseholder's Notice of Claim. The Tribunal finds that the costs of Mr Willson's valuation were so incurred.
- 27 In the absence of any challenge to the amount of Mr Willson's fee, the Tribunal determines the freeholders' reasonable valuation costs recoverable from the leaseholder under section 9(4) at £250 plus VAT (if applicable).

Summary

- 28 The Tribunal determines that the reasonable costs recoverable by the freeholders from the leaseholder are:
 - legal costs of £320.00 plus VAT (if applicable)
 - disbursements of £31.50
 - valuation costs of £250.00 plus VAT (if applicable).

Nigel P Gravells

NIGEL P GRAVELLS
CHAIRMAN

16 OCT 2003