

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

Ref: M/LRC 243 &
LRC 246-249

DECISION OF LEASEHOLD VALUATION TRIBUNAL

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

Applicants: Mr & Mrs B. Shaw
Mr J.E Crouch
Ms S. Carpenter
Mr & Mrs P.C Wheeler
Mr & Mrs R.J Titcomb

Respondent: Miss M.A.T Johnson

Re: 85 Bankside Crescent, Streetly, Sutton Coldfield
62 Hundred Acre Road, Streetly, Sutton Coldfield
1 Laneside Avenue, Streetly, Sutton Coldfield
11 Bankside Crescent, Streetly, Sutton Coldfield
67 Laneside Avenue, Streetly, Sutton Coldfield

Dates of Tenants' Notice: 26 October 2000
11 September 2000
27 September 2000
18 September 2000
11 September 2000

Application to Tribunal dated: 1 February 2001

Heard at: The Panel Office

On: Thursday 12 July 2001

Dealt with by written submissions

Members of the Leasehold Valuation Tribunal:

R.T Brown FRICS (Chairman)
J.C Ritchie
Mrs C.L Smith

Date of Tribunals decision: 02 NOV 2001

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

In respect of

**11&85 Bankside Crescent, Streetly
1 & 67 Laneside Avenue, Streetly
62 Hundred Acre Road, Streetly**

JURISDICTION

This is an application on behalf of the leaseholders listed below dated 1 February 2001 for the determination of costs in accordance with Section 9(4) of the Leasehold Reform Act 1967.

85 Bankside Crescent – Mr & Mrs B Shaw
11 Bankside Crescent – Mr & Mrs P Wheeler
62 Hundred Acre Road – J Crouch
1 Laneside Avenue – S Carpenter
67 Laneside Avenue – Mr & Mrs R Titcumb

The respondent in this case is Miss M A T Johnson.

A properly constituted Leasehold Valuation Tribunal met to discuss the matter on Thursday, 12 July 2001. After their meeting, it transpired that a written submission had been received which might have affected the outcome of the case. Upon investigation of the matter by the Chairman, it was discovered that no deadline had been issued to the parties other than it was intended that the parties should attend a hearing which would take place at 3.15 p.m. In fact the Committee considered the matter before 3.15 p.m. and the additional submissions were received between their meeting and 3.15 p.m. The Chairman therefore offered both parties a further opportunity to make submissions before the matter was reconsidered. A deadline of 3 August was set for this purpose.

Section 9(4) of the 1967 Act provides as follows:

Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, 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 or 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;*

but so that 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.

Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

the costs which a person may be required [to bear] under section 9(4) . . . of the 1967 Act . . . do not include costs incurred by a landlord in a connection with a reference to a leasehold valuation tribunal.

VAT - all figures referred to are exclusive of VAT. We have no jurisdiction to the term "conclusively VAT matters" as they are a matter for HM Customs and Excise, therefore we make our determination exclusive of VAT save that VAT shall be added at the appropriate rate if applicable.

SUBMISSIONS

The parties were offered the opportunity of a public hearing but elected to deal with the matter by way of a written submission.

Midland Valuations (Mr J Moore) represented the applicants and Willcox Lane Clutterbuck Solicitors (Mr Sean Dempsey) represented the respondent.

Mr Moore's submission was contained in letters to the Tribunal dated 3 July and 3 August. The respondent's submission was contained in two letters dated 12 and 24 July.

Mr Moore in his submission stated that costs under Section 9(4)(a), (c), (d) and (e) were agreed between Midland Valuations and the freeholders agents, Messrs Cottons.

Under Section 9(4)(b) Midland Valuations submit the proper legal fee is £200 per property.

In support of this he quoted a number of recent Midland LVT cases as follows:-

M/LRC235 – 73 Stanley Avenue, Quinton
M/LRC233 – 4 Bromwich Drive, Sutton Coldfield
M/LRC222 – Shawhurst Lane Hollywood
M/LRC221 – 40 Frankborn Streetly
M/LRC218 – 9 Rotherham Close, Augustus Road, Edgbaston

He went on to state that he had found no evidence at the Tribunal awarding a higher figure than this for registered title and in two instances a figure of £150 was determined namely M/LRC196 – 113 Goldthorne Avenue, Sheldon and M/LRC171 4 Morton Gardens, Rugby.

In a number of cases neither valuer had known when negotiating whether or not the title to the property in question was registered, for example M/LRC186, 78 Brays Road, Sheldon, M/LRC185, 8 Herondale Road, South Yardley. In both instances the Tribunal awarded a figure not exceeding £225.00 plus disbursements if applicable.

In two other cases where the tenant's valuer was unable to state with certainty whether the title was registered, the Tribunal had awarded £200. M/LRC169, 199 Southgate Road, Great Barr and M/LRC240, 3 Ferney Hill Avenue, Redditch.

The titles of the five subject properties are all unregistered but in support of our argument that a fee of £200 as opposed to £225 is correct, we would wish to make three further observations.

1. There is increasing competition among solicitors for work of this sort and this was commented on in M/LRC2189, Rodman Close, Edgbaston. Midland Valuations and other valuers they have spoken to are increasingly coming across solicitors who are conveying registered freeholds for between £150 and £175. A fee of £200 for an unregistered title would not therefore be unreasonable.
2. Savings can be made where there are a number of properties (albeit unregistered) being dealt with on the same estate. M/LRC153, 22 Leomansley Road, Lichfield, supports this view where the freeholders valuers admitted that a fee of £350 might be appropriate.
3. Jagger Son & Tilley have prepared some documentation in respect of two of the properties which has been sent to the lessees solicitors for approval including, we understand, a contract. In each of the five cases under consideration, the Leasehold Reform Act 1967 Notice of Claim was served and such notice is a contract in itself and therefore it seems unreasonable that the landlords solicitors have taken time in preparing unnecessary items and then expecting the purchasers to pay the cost.

In their letter of 3 August, Midland Valuations make the point that Cartwright and Lewis' letter of 5 April is a compromise fee. At no time have Cartwright and Lewis or Midland valuations indicated that they believe £300 to be realistic or that it reflects the true level of conveyancing.

Mr Sean Dempsey's submission contends for costs of £300 plus VAT.

He considers that this case can be distinguished from early recent tribunal decisions for example that given in M/EH2182C, Smith -v- Skilton Court Limited where the property was subject to a straightforward registered title and an award of £200 plus VAT was made.

The title affecting the subject properties is unregistered and more complex, furthermore within the price the buyers solicitors will be given considerable assistance in that we will supply and engross the form TP1 for the first registration at HM Land Registry.

In further support a copy letter dated 5 April 2001 from Messrs Cartwright Lewis suggesting a compromise of the freeholders legal fees of £300.00 plus VAT and although not taken up at the time, this points to an indication that the level fees submitted is not exaggerated.

There is in general a slight uplift in the legal fees being paid and I will make reference to the decision of the Tribunal: N/EH2218 Field -v- Crane of 70 Elizabeth Road, Moseley of 14 May 2001 where legal costs of £250 plus VAT were agreed between the parties.

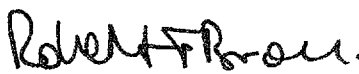
In his further submission, Mr Dempsey observes that Jaggar Son & Tilley (same firm as Willcox Lane Clutterbuck) are not purporting to charge for unnecessary items. Further they disagree that there is a downward trend in conveyancing fees.

The first part of submission Mr Dempsey referred to two matters on the same title of the subject properties, the costs agreed at £395 plus VAT. In addition he produced a sample copy contract from September 2000 relating to a freehold ground rent at 20 Goose Lane for fees of £300 plus VAT for an unregistered title. In all of these cases the freeholders legal costs were accepted by the other party without argument which indicates that £300 plus VAT is the market rate currently applicable.

DECISION

1. The Tribunal sits as an expert Tribunal and is not bound by previous decisions. Each case must turn on the facts.
2. The Tribunal treats with considerable caution quotations from other cases which are not necessarily quoted in context. In particular, Field -v- Crane where the legal costs were not an issue for the Tribunal having been previously agreed by the parties and no indication is given as to whether or not the title is registered.
3. The service of Notice certainly creates a contract however, there are different circumstances pertaining to each contract and these are dealt with in the transfer which must be prepared by the freeholders solicitors.
4. We considered the letter from Cartwright Lewis dated 5 April 2001. We accept Mr Moore's contention that this will be a compromise offer to settle the matter rather than an acceptance that £300 was a correct fee.
5. We find that as a matter of fact the title in this case is unregistered and further find that the transfer made by Messrs Willcox Lane Clutterbuck is "tailor made" to this estate.

We determine that the costs payable under Section 9(4)(b), shall not exceed £300.00 plus VAT plus, if appropriate, actual disbursements incurred in obtaining office copy register entries


Robert T Brown
Chairman

02 NOV 2001