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BIR/00CS/OAF/2004/0319

MIDLAND RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER S21(1)(ba) OF THE
LEASEHOLD REFORM ACT 1967**

Premises: 5 Albion Fields Drive, West Bromwich, West Midlands B71 4HN

Applicants: Mr and Mrs E T Wilkinson (tenants)

Respondent: Mr J E Timmins and Mr M H Adcock as Trustees of Ernest Timmins Deceased

Date of tenant's notice: 26 August 2004

Application dated: 26 October 2004

Heard at: Birmingham

On: 14 December 2004

Appearance:

Mr Anthony Brunt FRICS of Anthony Brunt & Co, valuer, for the tenants

No appearance for the landlord

Members of the leasehold valuation tribunal:

Lady Wilson
Mr S Berg FRICS
Mrs C L Smith

Date of the tribunal's decision:

January 2005

1. The price for the freehold of the property has been agreed, and this hearing was concerned only with the assessment of the landlord's recoverable costs. Mr Anthony Brunt FRICS appeared for the tenants and the landlord was not represented. For the landlord, Messrs Adcock & Company, solicitors, faxed the tribunal a few minutes before the hearing to say that they had been under the impression that agreement had been reached on the recoverable fees as well as the price, and they invited the tribunal to re-list the hearing at a future date, but sent written representations on the issue of the legal costs in case the tribunal refused an adjournment. Mr A P Herbert FRICS of Pennyquick Collins, the valuers instructed by the landlord, had already sent written representations on the issue of the valuation fee. Mr Brunt opposed an adjournment, and we were satisfied that a further hearing would be disproportionate and was unnecessary, since the landlord's case on both valuation and legal costs had been made by written submissions.

i. Valuation fee

2. Mr Herbert said that his fee was £300 plus VAT, based on two hours' work at £150 per hour. Mr Brunt agreed that this fee was recoverable and was not unreasonable in amount, and we determine that it is reasonable and recoverable under section 9(4)(e) of the Leasehold Reform Act 1967.

ii. Legal fees

3. In their written submissions on legal costs, Messrs Adcock & Company referred to a decision of a leasehold valuation tribunal in *Fee Simple Investments Ltd v Hartle* (Ref: M/LRC/265) where both the original parties to the lease and the terms of the lease were, they said, similar to

those in the present case, and where the tribunal awarded £100 plus VAT for receipt and investigation of the tenant's claim and £300 plus VAT and disbursements for the conveyancing because "the time ... spent on addressing unusually restrictive covenants ... justifies a higher charge than would usually be the case". Messrs Adcock & Company accordingly asked that the recoverable legal fees should be determined at not less than £100 plus VAT for receipt and investigation of the claim and £300 plus VAT and disbursements for conveyancing, and said that a case could be made for the fees to be higher given the passage of time since the *Fee Simple* case and the fact that the time already spent, as shown by the ledger entries, charged at £135 per hour, totalled £121.50, and that the charges for conveyancing were expected to amount to a further £391.50.

4. Mr Brunt submitted that an inclusive legal fee of £300 plus VAT, in line of the majority of recent assessments in similar cases, would be reasonable, but he undertook, at the request of the tribunal, to forward the present lease to the tribunal so that the point could be considered. Having considered the lease, and Messrs Adcock & Company's summary of work done and to be done, we determine that in this case £400 plus VAT plus reasonable disbursements is a reasonable and recoverable legal fee.

CHAIRMAN.....

DATE.....