

LEASEHOLD VALUATION TRIBUNAL (MIDLAND)
No. BIR/00CS/OAF/2005/0161

LEASEHOLD REFORM ACT 1967

Premises:- 28, Jarvis Crescent, Oldbury, West Midlands B69 4QH

Tenants:- A.M.Lynch and S.H.O'Reilly
(Agent:- Mr Brunt of Anthony Brunt & Co., Birmingham.)

Landlord:- Cyrec Properties Limited
(Agent:- Bigwood, Birmingham; Solicitors:- Black Graf & Co., London)

MEMBERS OF THE TRIBUNAL

Mr A.J.ENGEL (Chairman)
Mr I.D.HUMPHRIES F.R.I.C.S.
Miss B. GRANGER

DECISION AND REASONS OF THE LEASEHOLD VALUATION
TRIBUNAL

Background

1. By written notice, dated 29th April 2005, the Tenants gave the Landlord notice of their desire to have the freehold – pursuant to Section 8 of the Leasehold Reform Act 1967 (the Act).
2. By letter, dated 21st July 2005, the Tenants applied to the Tribunal for (amongst other matters) a determination (under section 21(1)(ba)) of the Act of the amount of Landlord's legal costs payable by the Tenants under Section 9(4) of the Act.

Hearing

3. A hearing was held in the Tribunal's premises in Birmingham on 6th September 2005. Mr Brunt appeared on behalf of the Tenants and gave evidence. The Landlord was not represented but the Tribunal had before it written representations from the Landlord's Agent and the Landlord's Solicitors.

4. The parties had agreed all matters other than that relating to legal costs prior to the hearing.

Timing of Decision

5. The Landlord's Agent had applied for the decision on legal costs to be postponed until after the work had been completed. Mr Brunt opposed this application.
6. There are arguments in favour of both sides. It is arguable that it is not until the work has been done that the reasonableness of the costs can be determined. The counter argument is that the Landlord may be lulled into a false sense of security if the reasonableness of its costs are decided upon after they have been incurred.
7. The Tribunal has decided that it will make its decision at this juncture – but with liberty to apply – as explained below.

Previous Cases

8. The Tribunal has considered the following previous decisions of (Midland) Tribunals:-

47, Lordswood Square	(BIR/00CN/OC9/2004/0027)
23, Barn Lane	(BIR/00CN/OAF/2005/0025)
3, Ribble Court and others	(BIR/00CN/OC9/2004/0028-63)
9. The decisions concerning 47, Lordswood Square and 3, Ribble Court were decisions under the Leasehold Reform, Housing & Urban Development Act 1993 in which the provisions concerning legal costs are (somewhat) different from those contained in the (1967) Act. Further those cases concerned issues which differ from those before this Tribunal – including the different work to be carried out by landlord's solicitors under the two Acts.

10. The decision in 23, Barn Lane was under the (1967) Act. We found this decision helpful – in particular the section headed (b) section 9(4)(b) on Page 4.

London Solicitors

11. Mr Brunt conceded (rightly in our view) that it was reasonable, in this case, for the Landlord to instruct London Solicitors.
12. We accept the evidence of Mr Dyar, a partner of Black Graf, the Landlord's Solicitors, that his normal charge-out rate is £275 (+VAT) per hour. We consider this rate to be reasonable for a partner in a firm of London Solicitors of the standing of Black Graf.

Time

13. Mr Dyar informs us that he considers that 2 hours work will be required. We do not agree. We consider that the work to be done is correctly set out in the decision in 23, Barn Lane in the following terms:-

"To approve the draft conveyance with any amendments, answer standard requisitions on title, arrange for the Respondent to execute the conveyance on receipt of an engrossment from the Applicant's Solicitors and then complete."

We determine that the (maximum) reasonable time for this work is one and a half hours.

Level of Fee Earner

14. In our view, this work can and should be done by a fee-earner below partner level. We determine that it is not reasonable for this work to be done by a partner.
15. In our view, the reasonable hourly rate for this work is (not more than) two thirds of Mr Dyar's rate.

Decision

16. Accordingly, two thirds of £275 is £183.33. One and a half hours @ £183.33 per hour is £275.
17. We add £75 for disbursements and supervision (by a partner) and we reach a (maximum) figure of £350.

VAT

18. VAT is to be added to the above figures (if appropriate).

Conclusion

19. The Landlord's reasonable legal costs (under Section 9 of the Act) are limited to £350 (+VAT, if appropriate).

Liberty to Apply

20. In the event that the work takes more than one and a half hours and/or the work is done by a fee earner whose charge-out rate is more than £183.33 (exclusive of VAT) per hour or costs in excess of £350 (exclusive of VAT) are incurred for any other reason, the Landlord has liberty to make written application to the Tribunal to reconsider the matter. The written application should contain full particulars justifying a reconsideration by the Tribunal.
21. The Tribunal wishes to make it clear that in granting liberty to apply it has in mind a situation in which the work turns out to be (unforeseeably) complex or difficult. It is unlikely that the Tribunal would be willing to consider any points which could have been made at this juncture.

DATED 10th September 2005

SIGNED



(A.J.ENGEL - Chairman)