(504)

LEASEHOLD VALUATION TRIBUNAL
OF THE MIDLAND RENT ASSESSMENT PANEL

REF: BIR/00CN/OC6/2004/0023

Decision on an Application under Section 21 (ba) of the Leasehold Reform Act 1967 for the determination of the costs payable under Section 9 (4)

Applicants:	Mr T W Meades (leaseholder) Mrs B A Meades (leaseholder)
Respondents:	Speedwell Estates Ltd (Freeholder) Fell House Shallow Ford Court Henley-in-Arden B95 5FY
Property:	26 Dyas Avenue Great Bar Birmingham B42 1HE
Date of Notice Exercising the Right to Acquire the Freehold:	24 September 2003
Hearing:	5 April 2004
Appearances:	Mr Brunt FRICS for the applicants Mr Fell for the respondents did not appear
Members of the Leasehold Valuation Tribunal:	Miss T N Jackson, BA Law (Hons) (Chair) Mr D Satchwell Mrs C L Smith
Date of Determination:	

1. Background

1.1 By notice dated 24 September 2003, the applicants gave notice of their claim to acquire the freehold of the premises. The matter was considered by a Leasehold Valuation Tribunal on the 5 March 2004. Mr Brunt, on behalf of the applicants, also made an application to the Leasehold Valuation Tribunal for the determination of the landlords costs under Section 21(1) (ba) of the Leasehold Reform Act 1967 but this was unable to be considered at the hearing on the 5 March 2004.

1.2 The matter before the Tribunal therefore is the determination of the costs payable under Section 9 (4) of the 1967 Act.

2. The Law

2.1 Section 9 (4) of the Leasehold Reform Act 1967 provides that:

"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 interests 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 abstract and copies as a person giving their notice may require;*

(e) *any valuation of the house and premises;*

but so that this sub-section shall not apply to any cost if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void".

Paragraph 5 of Schedule 2 of 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 connection with a reference to a leasehold valuation tribunal"

3. **Process**

3.1 At the hearing of 5 April 2004, Mr Fell, on behalf of the respondent, submitted written representations attached to his letter of the 19 March 2004, a copy of which had been provided to Mr Brunt. Mr Fell did not appear at the hearing. Mr Brunt appeared on behalf of the applicants.

3.2 Following the hearing but before the decision had been issued, Mr Fell expressed concern that Mr Brunt had not complied with the Directions dated 16 February 2004 and stated that the hearing should have been adjourned. In a subsequent letter he stated that as the Directions had not been complied with, then Mr Brunt should have been precluded from giving evidence at the hearing.

3.3 Following further correspondence, and in order to remedy any injustice, the Chairman requested that both parties be given the opportunity to submit (or resubmit) the documentation required in the Directions and that, unless both parties agreed that the matter be dealt with by written representations, a further hearing date be arranged for the matter to be considered afresh. Both parties agreed that the matter be dealt with by written representations although only Mr Brunt submitted any written representations.

3.4 By letter dated 12 August 2004, the Chairman requested the Respondent to confirm the date of the valuation carried out on their behalf and to provide a copy of the valuation report. The Respondent did not provide a response to that request.

4. **Evidence**

4.1 The respondent's time and costing sheet set out the following areas of cost namely:

(a)	16.9.03 receiving and inspecting copy notice served, inspected and rejected.	£30
(b)	Receiving and inspecting new LRA notice dated 24 September 03.	£30
(c)	Preparing and serving landlord's notice under Condition 1 requiring deposit.	£25
(d)	Preparing and serving landlord's notice under Condition 2 requiring title and statutory declaration.	£25
(e)	Receiving and verifying title.	£25
(f)	Receiving, investigating and verifying statutory declaration.	£25
(g)	Freehold valuation fee.	£350
	Total	£510

4.2 The Tribunal was advised that both parties had agreed solicitors costs at £250 plus VAT.

4.3 Item (a)

The applicant's notice of their claim to acquire the freehold was dated 24 September 2003 and had been served on the 25 September 2003. A previous notice had been served in September 2003 which had been rejected.

Section 9 (4) of the 1967 Act provides that the cost shall be borne by an applicant *'(so far as they are incurred in pursuance of the notice)'*. The Tribunal notes that the costs referred to in item (a) relate to an earlier notice and not the notice dated the 24 September 2003. The Tribunal therefore determines that the costs outlined in item (a) are not recoverable.

4.4 Items (b) to (f)

Mr Brunt accepted that the items referred to in (b) to (f) did properly fall within Section 9 (4) of the 1967 Act but submitted that the figures identified were unreasonable and in some cases unnecessary. The Tribunal notes that the figures provided in relation to each item appear to be fixed and no hourly rate has been given or any indication of the time taken in relation to each item. Mr Brunt submitted that Items (d) and (e), namely preparing and serving landlord's notice under condition 2 requiring title and statutory declaration and receiving and verifying title, would have required looking at office copies which could have been obtained by the respondent at a reduced price than that claimed. Mr Brunt referred to the decision of Raymere Ltdv BelleVue Gardens Ltd (2003) 36 EG in this regard. Mr Brunt queried whether item (f) namely receiving, investigating and verifying the statutory

declaration was necessary now that the requirement for occupation had been removed as a qualification for enfranchisement.

Mr Fell's written representations referred to Lands Tribunal decisions of Cressingham Properties Limited (1999) 2EGLR 117.PH and Speedwell Estate Limited (1999) 27EG128 as authority for the reasonableness of the costs claimed. He stated that the costs given were prepared in 1997 and the decision in relation to the costs of Notices and verifying title, etc was allowed in the sum of £25 per item. He stated that since that date 7 years had elapsed and the costing had now increased from £25 to £30. However, unlike the Cressingham Properties Limited case where the Lands Tribunal were given a full explanation of the process adopted by the landlord, the time involved in relation to each item and how the figures compared to external costs for this type of work, neither the respondent's time and costing sheet nor the written representation provided such details. Neither was evidence produced to explain the basis for the increase in costing. In the Speedwell Estate Limited case, the Tribunal determined it did not have jurisdiction to determine the appeal in relation to the reasonableness of costs and made obiter comments regarding the determination of costs.

The Tribunal finds and holds that, in relation to the general level of costs derived from previous decisions, findings of facts in such cases shall not be regarded as authoritative but, if clear and consistent guidance can be derived from previous decisions, parties are entitled to expect a Tribunal to decide an issue in a particular way. The evidence of the previous decisions referred to above, does not, in the Tribunal's view, provide clear and consistent guidance.

The Tribunal must determine what reflects the 'reasonable' cost. The Tribunal interprets 'reasonable' as meaning what may reasonably be expected assuming a competent professional familiar with such work, but no additional amount because the purchaser is paying. There is no evidence that the respondent engaged advisers in relation to items (b) to (f). The Cressingham Properties case is authority for stating that there is no reason in principle why costs under Section 9(4) of the 1967 Act should be restricted to costs paid out to a third party (out of pocket expenses) and exclude costs in the form of expenditure of time and effort by the landlord in carrying out the same activities (in house costs). However in-house costs should include some reasonable discount from what would otherwise have been paid to an outside contractor Gross Hill Properties V Coleyshaw LRA/12/1999.

Weighing the evidence before the Tribunal, as a matter of judgement and taking account of the decisions referred to, the Tribunal finds that the amount of the respondents costs for items (b) to (f) are unreasonable and that a reasonable figure is £100 excluding VAT (for VAT matters see paragraph 5 below).

4.5 Item (g)

Mr Fell claimed £350 for the freehold valuation fee and stated in his written representations that this was based on the fact that in addition to carrying out a first full inspection, it was necessary to carry out 3 further visits to find suitable comparables. Mr Fell also referred to the cases referred to in paragraph 4.4 above and stated that with regard to the valuation fee in the Cressingham Properties case, no full valuation was carried out and the amount of the fee was allowed at £150.

Mr Brunt commented that it was unreasonable that the applicant should have to pay for three further visits by the respondents valuer whom he believed to be a family member.
Mr Brunt submitted that on the basis of information obtained from the applicants, the respondent had carried out a full inspection but this had been carried out before the end of August 2003. Neither the respondent's time and costing sheet dated the 21 October 2003 nor the written representations submitted for the hearing by the respondent gave details of the dates of inspections. The respondent had failed to reply to a written request from the Tribunal on the date of the inspection. Therefore, in the absence of any evidence to the contrary, the Tribunal accepts the evidence based on the information from the applicant that the inspection was carried out before the end of August 2003. This being the case, the costs of the valuation were incurred before the date of the notice dated 24 September 2003 which was served on the 25 September 2003 and therefore the costs are not recoverable under Section 9 (4) of the 1967 Act as they were not 'incurred in pursuance of the notice'.

The Tribunal therefore determines that the freehold valuation fee of £350 is not recoverable.

5. **VAT**

All figures referred to in this decision are exclusive of VAT. The tribunal has no jurisdiction to determine conclusively VAT matters as they are a matter for HM Customs and Excise. Therefore, the Tribunal makes its determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable. The Tribunal's understanding, whilst not conclusive is that, if the respondent is not registered for VAT or is unable to recover the VAT element of his cost allowed by the Tribunal as an input tax, VAT should be added to the amounts the Tribunal determines.

6. **Determination**

The Tribunal's determination on reasonable costs incurred under Section 9 (4) of the 1967 Act is:

a) The applicant is not liable to pay the cost identified under item a) namely "16 September 03 receiving and inspecting copy notice served, inspected and rejected".

b) The applicant is liable to pay the respondent its costs in relation to items (b) to (f) inclusive but those reasonable costs are £100 (plus VAT if appropriate).

c) The applicant is not liable to pay the costs in relation to item (g) the freehold valuation fee.

Date: 16 SEP 2004

N Jackson

T N Jackson
Chair

Reference M/LTA 14

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LEASEHOLD VALUATION TRIBUNAL

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Subject Property:	26 Dyas Avenue Great Bar Birmingham B42 1HE

APPLICATION DATED 5 NOVEMBER 2004 BY THE RESPONDENT FOR PERMISSION TO APPEAL

1. The Respondent applies for permission to appeal to the Lands Tribunal the Leasehold Valuation Tribunal's (the "Tribunal") determination, dated 16 September 2004 on an application under Section 21(1)(ba) of the Leasehold Reform Act 1967.

2. The application expresses the view that the Tribunal determined the original application after hearing evidence from the Applicant's representative, of which the Respondent had not been made aware.

   However, following the hearing of 5 April 2004 but prior to a determination having been finalised and issued, the Respondent wrote to the Tribunal raising concerns. After considering the concerns and to ensure the Respondent could not be considered to have been prejudiced by letter dated 15 June 2004, the Tribunal advised that, a further hearing date would be set and both parties advised to comply with the Directions and that the matter would be considered afresh. Both parties subsequently confirmed they did not require attendance at a hearing and agreed for the matter to be dealt with by written submissions. The Tribunal's determination of 16 September 2004 was based upon the written submissions provided.

3. Further, the Respondent alleges that the Tribunal has misdirected itself as to the facts and states that full and further information will be provided to the Appeals Tribunal when the case is reheard. In the view of the Tribunal, the Respondent has produced no evidence to undermine the findings and determination of the Tribunal on the original application.

4. The Tribunal determines that the Respondents' application for permission to appeal be refused.