



S.60 Leasehold Reform, Housing and Urban Development Act 1993

DECISION & ORDER

Case Numbers: CHI/00ML/OC9/2007/0006
CHI/00ML/OC9/2007/0008
CHI/00ML/OC9/2007/0009

Property: 3 Park View Terrace
Brighton BN1 5PW

Applicants: Mr Jeffrey Hardy

Respondents: Claire Hines
Eileen Morrow
Gari Owen
Nicholas Eddison
Vanessa Parr

Applications: 26 June 2007
26 July 2007 x 2

Consideration: 16 October 2007

Decision: 29 November 2007

Tribunal: Ms J A Talbot MA
Mr N Robinson FRICS

Summary of Decision

The Tribunal determines that the total amount payable by the Respondents to the Applicant in respect of legal and valuation costs shall be the sum of £1,832.50. VAT is to be added to this figure as appropriate.

Application

1. On 26 June and 26 July 2007, the Applicant made three separate Applications to the Tribunal pursuant to Section 33 of the Leasehold Reform Housing and Urban Development Act 1993 ("The 1993 Act") to determine the costs payable by the Respondents in connection with leasehold enfranchisement at 3 Park View Terrace, Brighton ("the property").
2. Directions were issued on 28 June and 2 August 2007 to the effect that the costs would be determined by the Tribunal on the basis of written representations and that all three applications would be dealt with together. Neither party objected.
3. Solicitors for both parties provided written submissions, dealing with three schedules of costs which were duly considered by the Tribunal on 16 October 2007. Solicitors for the Applicant were Dean Wilson Laing ("DWL"). Solicitors for the Respondents were Howlett Clarke ("HC").

Law

4. The law is to be found at Section 33 of the 1993 Act, which deals with costs incurred in connection with new leases to be paid by the tenant, and provides, insofar as is relevant:
 - (1) *Where a notice is given under section 13, then (subject to the provisions of this section...) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner ... for the reasonable costs of and incidental to any of the following matters, namely –*
 - (a) *any investigation reasonably undertaken –*
 - (i) *of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or*
 - (ii) *of any other question arising out of the notice;*
 - (b) *deducing, evidencing and verifying the title to any such interest;*
 - (c) *making out and furnishing such abstracts and copies as the nominee purchaser may require;*
 - (d) *any valuation of any interest in the specified premises ...*
 - (e) *any conveyance of any such interest;*

but 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.

- (2) *For the purposes of subsection (1) any costs incurred by the reversioner ... in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such cost.*
- (3) *Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time then (subject to subsection 4) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.*
- (4) *The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of Section 23(4) or 30(4)*
- (5) *The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.*

Consideration

5. The Tribunal carefully considered the schedules, written submissions and various LVT decisions to which the parties referred in support of their case.

6. In summary the facts were as follows:

(a) The Property is a terraced house converted into five flats. By an Initial Notice under Section 13 of the Act dated 31 March 2005 (“the first Initial Notice”), the qualifying tenants proposed to acquire the freehold of the property for a total price of £20,450. By a Counter Notice dated 10 June 2005, the reversioner admitted the right to enfranchise and proposed a total purchase price of £25,500.

(b) Although copies of correspondence and attendance notes from DWL’s file were not provided, the Tribunal was informed that the Counter Notice was served after relevant investigations, but that the landlord maintained that the first Notice was defective for a variety of reasons. No application was made to the County Court. Negotiations continued between the parties “on an open market basis”. Subsequently, two further Initial Notices were served (“the Second Notice” and “the Third Notice”) but both were undated and therefore defective. The Tribunal was informed that these were also withdrawn although it was not clear when. No further Counter Notices were served

(c) A letter from HC dated 16 December 2005 admitted that “a Notice enclosed with our letter of 15 December was inaccurate and therefore is formally withdrawn”. It was not clear to the Tribunal which Notice this referred to, as there was no Notice dated 15 December in the papers. According to DWL’s letter to the Tribunal dated 26 June 2007, it was the first Notice that was withdrawn on 16 December. However, an undated brief submission enclosed with the bundle of documents referred to Notice 1 as dated 31 March 2005, Notice 2 as served in December 2005, and Notice 3 served in February 2006. It was therefore unclear exactly when the First Notice was withdrawn, as HC’s letter of 16 December 2005 could have referred to the Second Notice. No clear information was provided as to the dates of service or withdrawal of any of the Notices.

(d) The Tribunal was not informed whether the enfranchisement had proceeded through negotiation, but in the absence of any claim for conveyancing costs it was assumed that the enfranchisement had not been completed. A clear and complete summary or chronology of the whole process would have assisted the Tribunal. It was at least clear that there was a total of three defective Initial Notices served, and one Counter Notice.

7. DWL claimed the following costs:

(a) In connection with the First Notice:

Solicitors Costs of £2,252, Valuer’s Fees of £600, all exclusive of VAT.

(b) In connection with the Second Notice:

Solicitors Costs of £571, Valuer’s fees of £423, all exclusive of VAT.

(c) In connection with the Third Notice:

Solicitors Costs of £1,479, Valuer’s fees of £100, all exclusive of VAT.

8. In support of their costs, DWL provided brief Schedules broken down into letters, attendances and telephone calls. No details of content or dates were supplied. Various

time-recording computer printouts were also supplied but no systematic attempt had been made to cross-refer the printouts to the Schedules.

9. In addition, four copies of DWL's client Terms and Conditions were to be found various points in the papers provided to the Tribunal. Only two were signed by Mr Hardy, both on 10 June 2005. One was incomplete. In all cases, the named fee earner with conduct of the case was Ms C Whiteman, a Partner, and her hourly charging rate was stated to be £185. However, costs for the Third Notice were charged at £195 per hour, presumably following an annual review of hourly rates, but there was no evidence that Mr Hardy had been told of any revision as stated in paragraph 3 of the Terms and Conditions.
10. In the absence of any challenge by HC on this point, the Tribunal was prepared to accept that there had been an annual increase in charge out rates and that Mr Hardy was aware of this. The hourly rates claimed were reasonable. It was not unreasonable for Mr Hardy to retain specialist solicitors, and in view of the importance of the matter to the client and the compulsory nature of the transaction, for a partner to have overall conduct of the case.

The First Notice

11. On the First Notice, DWL submitted that they were entitled to their reasonable costs until the Respondents admitted that the Notice was defective under Section 28(4) and (7) of the Act. They therefore claimed costs under Section 33(3) for work done between June and October 2005.
12. HC submitted that the costs payable by the Respondent were confined to those set out in S.33(1) of the Act, and that majority of costs claimed were outside the scope of this provision. S.33 only allowed for investigation of matters set out in S.33, which did not include preparation and service of a Counter-Notice, taking instructions, attending on, or advising the landlord, or dealing with valuation or management issues. The matter was straightforward and the time claimed was unreasonable. It was submitted that S.33 was a very restrictive provision and that the allowed costs should be limited accordingly.
13. The Tribunal agreed that the costs recoverable from the Respondents were limited to those matters set out in S.33(1). It did not accept that the First Notice had been withdrawn within the meaning of S.28, which presupposes that a valid Initial Notice and Counter-Notice have been served but the nominee purchaser decides not to proceed with the transaction. Even if S.28 did apply, it would not entitle the Applicant to claim any costs beyond the scope of S.33(1). Section 33(3) has to be construed in this context.
14. The Tribunal accepted the general principle, raised by DWL, that enfranchisement is to be regarded as a form of compulsory purchase and that a freeholder should not find himself out of pocket in respect of costs reasonably incurred from a transaction and proceedings forced upon it. However, this has to be viewed within the context of S.33(1). In the LVT decision in which this principle was enumerated, it was not disputed that the fees in question had been incurred after the Initial Notice had been served and related only to the preparation of the Counter Notice, rather than all subsequent costs incurred.
15. On that point, it is arguable, as suggested by HC, that the costs of the Counter-Notice are not encompassed within S.33(1), as they are not explicitly referred to. However, the Tribunal took the view that the costs of preparing the Counter-Notice would inevitably be incurred, and fell within S.33(1) as being "incidental to any question arising out of the service of the Initial Notice". It was not unreasonable for DWL to serve a Counter-Notice to protect its client's position whilst still maintaining that the Initial Notice was defective.

16. The Tribunal also accepted that a limited amount of solicitor's time could be claimed within S.33 for taking initial instructions from the landlord and instructing the valuer, as these were inevitable incidental costs. However, this did not extend to continuing attendances, correspondence, continuing advice or any investigation of the management of the property. Also beyond scope of S.33 were any cost incurred after the service of the Counter-Notice in connection with any open market negotiations. DWL had made no attempt to apportion these costs although it appeared likely to the Tribunal that the majority of items listed in the computer printout after the service of the Counter-Notice were incurred on this basis.
17. The Tribunal agreed with HC that the matter was straightforward, in terms of investigation of title and the right to enfranchise, given that the property in question was a relatively small, single converted property, as opposed to (for example) a larger estate of blocks of different flats where the extent of the freehold to be acquired and appurtenances might be in issue.
18. The Tribunal therefore allowed the partner's costs of verifying title and preparing the Counter-Notice, and an assistant's costs in connection with the Land Registry, as claimed on the Schedule. It allowed 5 units for taking instructions and considering the Initial Notice, 7 units for instructing the valuer and corresponding with the nominee purchasers on valuation. It disallowed the other costs claimed as beyond the scope of Section 33(1). It also had regard to the proviso in S.33(2). The total legal costs allowed were £659 plus VAT as appropriate, as set out in the attached Schedule as amended by the Tribunal.
19. On valuation, the Tribunal accepted that despite maintaining the deficiencies of the First Notice, it was not unreasonable for the landlord to obtain a valuation for the purposes of preparing the Counter-Notice. It considered the fees of Andrew Pridell Associates Ltd of £600 plus VAT, invoice dated 24 August 2005, to be reasonable and within scope of S.33(1)(d). These costs were therefore allowed in full.

The Second Notice

20. The Tribunal's general observations concerning the nature and extent of costs recoverable within S.33 apply to the costs claimed in connection with the Second Notice. The Tribunal was a little surprised that no costs were claimed for investigation of title, as it was possible that changes could have occurred in the 9 months since the First Notice. However, the costs claimed were excessive. No Counter-Notice was prepared or served as far as the Tribunal was aware. 5 units were allowed for investigation of the Second Notice and correspondence incidental to that. As the only apparent deficiency was that the Notice was undated, extensive correspondence and personal attendance on the landlord was not justified. The total legal costs allowed were £259 plus VAT as appropriate.
21. The Tribunal disallowed the valuer's fees of £423 plus VAT, as according to APA's invoice dated 2 February 2006 these were incurred "conducting negotiations with the lessees' valuer". They were not costs of valuation within S.33(1)(d).

The Third Notice

22. The costs claimed in connection with the Third Notice appeared to the Tribunal to go well beyond the scope of S.33. The summary breakdown provided lacks detail. 15 units were claimed for "Preparation of Counter-Notice, considering validity of Notice and operation time in relation thereto", but there was no evidence that a Counter-Notice had been served on this occasion. In any event, the only stated deficiency in the Second Notice was, again, that it was undated, which would not require a great deal of investigation, especially so soon after the Second Notice. This was not a complex issue.

23. From the computer ledger printout, it appeared likely that much of the costs claimed for correspondence and attendances may have related to a separate ongoing service charge dispute at the property, especially as there is mention of attending an adjourned Tribunal, which eventually took place on 7 November 2006. This Tribunal could find no other explanation for the 31 items of correspondence and attendances claimed, which could not be justified solely in connection with or incidental to the Third Notice. The Tribunal allowed 5 units for investigating the Notice plus a total of 6 items of correspondence and disallowed all attendances and correspondence with the Tribunal (which is expressly excluded under S.33(5)), totalling £214.50 plus VAT as appropriate.
24. The Tribunal allowed the valuer's fees of £100 exclusive of VAT, as per APA's invoice dated 30 March 2006, as it was not unreasonable to update the valuation prepared several months earlier, within the context of investigating the fresh Notice.

Determination

25. The Tribunal determines that the Applicant's reasonable costs payable by the Respondents pursuant to Section 33 of the 1993 Act are as follows, and as shown on the attached Schedules, all exclusive of VAT to be added as appropriate:

First Notice

Legal costs	£659
Valuation costs	£600

Second Notice

Legal costs	£259
Valuation costs	£Nil

Third Notice

Legal Costs	£214.50
Valuation costs	£100

Total	£1,832.50
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Dated 29 November 2007

**Ms J A Talbot
Chairman**



THE FIRST NOTICE

SCHEDULE OF COSTS 3 PARK VIEW TERRACE

AS AMENDED BY THE TRIBUNAL

DESCRIPTION OF FEE EARNERS:-

Name	Grade (1-4)	Hourly Rate (£)
Claire Whiteman	1	185.00
Bar Huberman	4	115.00
Angharrad Percy	4	115.00
Karen Morris	4	115.00

Item	Units	Hrs	Mins	Rate (£)	TOTAL (£)
Letters to client					
C Whiteman Investigation of management, interest in premises and title following Notice	8.5		54 30	185.00	166.50 92.50
Attendance on Client					
C Whiteman Investigation of interest in premises and title following Notice	28	2	48	185.00	518.00
Telephone to Client					
C Whiteman Investigation of interest in premises and title following Notice	12	1	12	185.00	222.00
Letters to Other Side					
C Whiteman Verifying title	8	Allow 1	18	185.00	55.50 18.50
C Whiteman Valuation	8	2	48	185.00	148.00 37.00
C Whiteman Investigating management	4		24	185.00	74.00
C Whiteman Investigation of whether Flat 5 able to acquire interest following Notice	1		6	185.00	18.50
C Whiteman Costs	2		12	185.00	37.00
B Huberman Costs	1		6	115.00	11.50
Letter to Other					
C Whiteman Managing Agents- investigating management	5	Allow 5	30	185.00	92.50
C Whiteman Valuer	10		30	185.00	92.50
C Whiteman Martin Cray- investigating management and title	1		6	185.00	18.50
C Whiteman Land Registry- Verifying title	1		6	185.00	18.50
C Whiteman Other Side's Valuer	1		6	185.00	18.50
C Whiteman Flat 5- whether able to acquire interest	2		2	185.00	37.00
Telephone to Other Side					
C Whiteman Verifying title	1		6	185.00	18.50
C Whiteman Valuation	1		6	185.00	18.50
Telephone					

C Whiteman Valuer	7		42	185.00	128.50
Morris Land Registry-investigating note	1		6	115.00	11.50
Preparation					
C Whiteman Verifying title	12	1	12	185.00	222.00
C Whiteman Counter-Notice	10	1		185.00	185.00
C Whiteman Valuation	5		12	185.00	92.50
C Whiteman	1		6	185.00	18.50
<i>Investigating management</i>					
A Percy Verifying title	2		12	115.00	23.00
B Huberman Costs Schedule	2		12	115.00	23.00

Allowed £659

99.

Other Expenses		
Other vatable	Valuer's Fee Last	600.00
Other non-vatable	First Last	600.00
SUB TOTAL		2,852.00
VAT on Solicitors' & Counsel's fees		394.10
VAT on other expenses		105.00
GRAND TOTAL		3,351.10

The costs estimated above do not exceed the costs which the party named above is liable to pay in respect of the work which this estimate covers

Dated: 02.02.2006

Signed: 

Name of Firm of Solicitors: Dean Wilson Laing

Name of Partner: Claire Whiteman

For the Freeholder

THE SECOND NOTICE

107.

**AMENDED
BREAKDOWN OF COSTS**

3 PARK VIEW TERRACE BRIGHTON EAST SUSSEX

AS AMENDED BY THE TRIBUNAL

Undated notice served December 2005

Attending client to take instructions and telephone attendances on client	48 minutes @ £185 per hour	£148.00	
Letters to other side	3 8 @ £18.50 each	£111.00	55.80
Telephone attendance on client and valuer	6 @ £18.50 each	£111.00	
Considering notice validity and further advice	54 minutes @ £185 per hour 18 minutes @ £115 per hour	£201.00	92.50
Total solicitors' cost	Allow Suits	£571.00	
VAT thereon		£ 99.92	
Valuers' fee		£497.02	
Total costs of December notice		£1167.94	

Allowed Solicitors Costs £259
Disallowed Valuers fees ^{exclusive of VAT}

THE THIRD NOTICE

BREAKDOWN OF COSTS

3 PARK VIEW TERRACE BRIGHTON EAST SUSSEX

AS AMENDED BY THE TRIBUNAL

February 2006 Notice

Disbursements			NIL
Attendance on client in person	18 minutes @ £185 48 minutes @ £195		£214.50
Telephone attendance on client	1 hour		£195.00
Letters to other side	3 18 @ £19.50		£351.00 58.50
Letters to client	3 13 @ £19.50		£253.50 58.50
Preparation of Counter Notice considering validity of Notice and preparation time in relation thereto	1 hour 30 minutes ^{5 units}		£292.50 97.50
Telephone attendances on other side and Tribunal	30 minutes @ £195		£97.50
Correspondence with Tribunal regarding withdrawal of claim	24 minutes		£78.00 _____
Total solicitors costs			£1479.00 214.50
VAT thereon			£258.82
Valuers' fees			£117.50
Total			£1855.32

Allowed solicitors costs £214.50
 Valuers fees £100
 both exclusive of VAT