

MIDLAND RENT ASSESSMENT PANEL

Ref:- BIR/41UB/OAF/2008/0509

Leasehold Reform Act 1967**DECISION of LEASEHOLD VALUATION TRIBUNAL
On Applications under Section 21 of the Leasehold Reform Act 1967**

Applicant: Susan Tracey

Respondent: Peter Cuthbertson and Timothy Peter Cuthbertson

Re: 21 Norton Grange, Norton Canes, Cannock, Staffordshire
WS11 9QZ

Date of Tenants Notice: 12th June 2008

Application dated: 21st August 2008

Heard at: The Tribunal's Offices in Birmingham

On: 24th April 2009

APPEARANCES:

For the Tenant: Mr. A. Brunt of Anthony Brunt & Co, Valuers

For the Landlord: No attendance

MEMBERS OF THE LEASEHOLD VALUATION Tribunal:

Dr A. J. VERDUYN (Chairman)
Mr S. BERG FRICS

Date of Tribunals decision: 29th April 2009

DETERMINATION

Conveyancing costs of £450, to which Value Added Tax can be added plus reasonable disbursements under Section 9 (4) of the Leasehold Reform Act 1967, shall be payable.

REASONS FOR THE TRIBUNAL'S DECISION

1. On 12th June 2008 Anthony Brunt & co, valuers, for Susan Tracey (the 'Applicant') served a Notice of Claim (the 'Notice') on Mr P. Cuthbertson and Mr T.P. Cuthbertson (the 'Respondents') to acquire the freehold of 21 Norton Grange, Norton Canes, Cannock, Staffordshire WS119QZ (the 'Property') under Part 1 of the Leasehold Reform Act 1967 (the '1967 Act').
2. On 21st August 2008 Anthony Brunt & Co submitted an application to the Leasehold Valuation Tribunal for a determination as to the price payable for the freehold of the Property under Section 9 of the 1967 Act.
3. Although the validity of the Notice was initially challenged by the Respondents, this challenge was withdrawn before it was adjudicated upon and the matter proceeded by way of negotiation. All issues were agreed between the parties save for the costs payable by the Applicant under Section 9(4) of the 1967 Act. A hearing to determine those costs was held on 24th April 2009 with Mr Brunt attending on behalf of the Applicant. The Respondents did not attend and were not represented.
4. The Tribunal read the letter for the Respondents dated 9th April 2009, noting the right of the Respondents to use the solicitors of their choice and challenging the Applicant to prove that other solicitors would do the required work more cheaply than the £650 plus VAT proposed to be charged by Blackhams. In the report for the Applicant dated 15th April 2009, Mr Brunt acknowledged the freedom of choice of the Respondents, but contended that in current market conditions £350 plus VAT would be reasonable. In a response dated 20th April 2009 Mr Holland for the Respondents asserted a firm quotation of £650 plus VAT and denied that these costs were inflated. (At the hearing Mr Brunt accepted that there was no question of the price being inflated by the use of a firm in which one of the Respondents was a partner.) Mr Holland also asserted that Mr Brunt's assessment of legal costs was "conjecture". In response, Mr Brunt copied a letter to the Respondents and the Tribunal from Gardner, Iliff & Dowding, solicitors, suggesting that they would charge £375 plus VAT and that they were aware of a range of charges between about £330 and £450 plus VAT. Mr Holland asked the Tribunal to adjourn the hearing for him to take instructions on this letter, but an adjournment was declined. He wrote further to this on 23rd April 2009 observing that Mr Brunt's evidence was for fees up to £450 plus VAT in respect of Staffordshire solicitors. He also asked the Tribunal to consider deferring a decision until after the work had been done.
5. At the hearing Mr Brunt maintained the arguments he advanced in writing and asserted that they reflected his experience of the market for conveyancing work of this sort. He maintained fees would not normally exceed £375 plus VAT, but went on to say that Sydney Mitchell in Birmingham City Centre charged £385 plus VAT. He observed that the quotation from Blackhams was not supported by a client care letter, hourly rates or anticipated time to be spent on the work in question. He

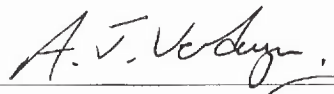
accepted Blackhams were specialists, but considered that this meant that they might reasonably be expected to be quicker at the work. There was pressure on fees in the market by reason of the recession. He said the sum of £650 plus VAT was disproportionate to the value of the freehold (albeit that he did not disclose the sum to be paid for the freehold in this case).

6. The Tribunal declined to defer a decision on costs as disproportionate to the issue. The Tribunal accepts that the Respondents are free to choose their own solicitors and that one of the Respondents is a partner in the firm chosen is irrelevant. The Tribunal also accepts that firms with specialist knowledge, like Blackhams, are entitled to charge for their expertise, although this is likely to be mitigated by the speed of work that results. Although the sum of £350 plus VAT is frequently applied by the Tribunal, in this case it was accepted that it could be exceeded to reflect that choice and expertise without the sum resulting being rendered unreasonable. However, there was insufficient evidence to justify a sum of £650 plus VAT, which exceeded the figures presented by Mr Brunt in his evidence and in the letter of Gardner, Iliff & Dowding. Having considered all the written submissions from the parties, including the letter of Mr Holland for the Respondents dated 23rd April 2009, and the oral submissions of Mr Brunt, the Tribunal concludes that the maximum reasonable sum on the evidence presented to it and in light of the submissions by the parties is £450 plus VAT.

DETERMINATION

7. The Tribunal determine that the costs payable by the Applicant under section 9 (4) of the 1967 Act amount in total to £450 plus VAT and disbursements.

Signed



Dr. A. J. Verduyn – Chairman Dated 29th April 2009