

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S.33 of the Leasehold Reform, Housing and Development Act 1993
(Freeholders Costs Payable by the Nominee Purchaser)**

DECISION AND REASONS

Case Number: CH1/29UC/OC9/2008/0005

In the matter of 26 Cavendish Road, Herne Bay, Kent CT6 5BB

Applicants: Susan Margaret Jacobs, Jamie Ayles, Claire Jane Eley & Louise Dordoy

Respondent (Freeholder): Waterglen Ltd

Date of Application: 15th September 2008

Tribunal Members: Mr. S Lal L.I.M, Barrister (Legal Chairman)
Mr. R. Athow FRICS

Representation:

Paper Hearing only

Date of Decision: 19th February 2009

Application

1. The Applicants applied to the Tribunal for a determination of the amount of Freeholders costs payable by the Nominee Purchaser under the provisions of section 33 of the Leasehold Reform, Housing and Development Act 1993 ("the Act").
2. Directions were issued on the 19th September 2008 that the matter is dealt with on the basis of written submissions only and without an oral hearing. Neither party objected to this procedure and both parties were directed to supply full details of any points in dispute. The Respondents have replied to the above with service of a Respondents Bundle received by the Tribunal on 4th November 2008. The Applicants rely on their initial bundle sent to the Tribunal with their application.

Inspection

3. The Tribunal inspected the property on 19th February 2009. It is a converted house into three subject flats in the central part of Herne Bay.

The Law

4. The relevant statutory provision is as follows:

“33 Costs of enfranchisement

(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, 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 that 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 or other property;

(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 or any other relevant landlord 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 costs.

5. The issue for the Tribunal is to determine “reasonableness”. That concept must be determined with regard to whether the landlord himself would incur those costs as if he would have been personally liable to pay them.

The Evidence

6. The Respondents solicitors, Tollhurst Fisher have supplied a witness statement from Robert James Plant dated 3rd November 2008 in which he sets out the amount of work carried out in respect of the purported freehold purchase. He also attaches a time sheet breakdown of the costs in minute segments. It is clear from the history of the matter that Applicants through their advisors had served a number of defective notices to the Respondents, in fact a total of four such notices were eventually served because all the earlier ones had been defective in some material respect, for example not being signed. This would have inevitably and invariably increased the amount of time spent in the Respondents having to deal with each notice as it was served.
7. The Tribunal is satisfied that the amount claimed by the Respondents is a reasonable sum as the great majority of it seems to be in response to the repeated filing of defective notices by the Applicants solicitors. The charge out rate is also not excessive in the opinion of the Tribunal and reflects the need to obtain proper and considered legal advice in a difficult jurisdiction. The Tribunal notes that the Applicants have not specifically challenged the contents of the witness statement prepared by Mr. Plant or the time charge sheet.
8. The Tribunal, which is an expert Tribunal and is able to bring its own experience to bear, finds in any event the valuer's fees of £900 are reasonable in any event and reasonably incurred in assessing the value of the reversionary interest.

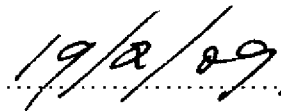
The Decision

9. The Tribunal decides that reasonable costs of the Freeholder in connection with this matter amount to:

Legal Costs	£1158 plus VAT
Disbursements	£3.50
Valuer's Fees	£900


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Chairman


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