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## LEASEHOLD VALUATION TRIBUNAL

On an application to determine the costs payable under section 9(4) of the Leasehold Reform Act 1967 (the Act)

Case number	BIR/00CN/OAF/2012/0059
Property	10 Bishbury Close, Edgbaston, Birmingham B15 3NU
Applicant	Ms S J Campbell (leaseholder)
Represented by	Mr A W Brunt FRICS
Respondent	Trustees of the Calthorpe Estate (Freeholder)
Represented by	Mr J K Willson BSc LLB MRICS
Date of Application	24 <sup>th</sup> August 2012
Tribunal	Mr R Brown FRICS Mr J Martin Solicitor

### Decision

1. The reasonable legal costs and valuation fees of the Respondent (Freeholder) payable by the Applicant (Leaseholder) in respect of the matters set out in section 9(4) of the Act are: legal costs of **£550.00 together** with disbursements and valuation fees of **£400.00** plus **VAT** in each case if applicable.

### Reasons

2. The Applicant is the lessee of the property described above under a long lease and has applied to the Respondent for the purchase of the freehold under section 9(1) of the Act.

### Introduction

3. This application relates to the legal costs and valuation fee to be paid by the Applicant pursuant to Section 9(4) of the Act as a consequence of the application by the Applicant to acquire the freehold of the subject property.
4. Directions were issued on 12<sup>th</sup> September 2012.

## **The Law**

5. Under section 9(4) of the Act, an enfranchising lessee is responsible for paying the landlord's '*reasonable costs of and incidental to any of the following matters, namely-*
  - (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 interest 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 abstracts and copies as the person giving the notice may require;
  - (e) any valuation of the house and premises'.
6. The usual method of assessment of the fees payable by the lessee are those which would be payable by the freeholder "*if the circumstances had been such that he was personally liable for all such costs*".
7. If the freeholder (Respondent in this case) is registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the freeholder, not the lessee (Applicant in this case). Therefore, if this is the case in this instance, no VAT will be payable by the Applicant on either the legal costs or the valuation fee.

## **Hearing**

8. A hearing was held at the Midland Rent Assessment Panel, Priory Court, Bull Street Birmingham and attended by Mr Brunt and Mr Willson.

## **Issues**

9. There appeared to be no dispute between the parties about the Respondent's entitlement to recover legal costs and a valuation fee.

## **Applicant's Case**

### *Legal Costs*

10. The Applicant in his submission says that a fair fee for legal costs under section 9(4) (a) to (d) is £450.00 plus VAT notwithstanding the fact the he could arrange for the work to be undertaken for a third less as we are currently in recession.
11. The transfer of registered title is not 'rocket science' and in dealing regularly with solicitors on such matters quotes typically range from £325.00 to £450.00 plus VAT and disbursements.

12. The Bourneville Village Trust also employ the same firm of the solicitors (Messrs Shakespeare's) with the same assistant acting and their charges for similar work are £385.00 plus VAT and disbursements.
13. Mr Willson quotes 31 Pavenham Drive, Edgbaston BIR/00CN/OAF/2011/0081 but Mr Brunt suggested that he may not be aware that on the same day another case was heard by the Tribunal *Re 34 Rosafield Road BIR/OOCR/OAF/2012/0002* where Shakespeare's acted and fees of £385.00 plus VAT and disbursements were awarded.
14. Under paragraph 9(1) of the Leasehold Reform (Enfranchisement and Extension) Regulations 1967/1879 it states 'The conveyance shall be prepared by the Tenant'
15. Questioned by the Tribunal neither party knew the grade of fee earner the assistant carrying out the work charged. However the parties were aware that the person concerned was unqualified but experienced.

#### *Valuation Fees*

16. Mr Brunt did not dispute that Mr Willson had made an inspection of the exterior but was unsure as to when.
17. In his experience fees typically charged reflecting the recession today are between £385.00 and £450.00 plus VAT.
18. Recently Mr Brunt had become aware that a local firm of Chartered Surveyors C P Bigwood were charging £210.00 including VAT.
19. Questioning if £400.00 plus VAT was appropriate Mr Brunt suggested it should be slightly less and suggested £350.00 plus VAT assuming the inspection was after the date of the Notice of Claim but before the date of Application to the Tribunal.
20. Responding to the Tribunal Mr Willson advised that his inspection took place on 26<sup>th</sup> July 2012.
21. Questioned by the Tribunal Mr Brunt suggested the work of valuation would take between 2 and 2 ½ hours.

#### **Respondent's Case**

22. Referring to his statement of case Mr Willson said he had little to add.
23. His position essentially relies on the determination in *Hussain v Trustees of the Calthorpe Estate 31 Pavenham Drive, Edgbaston BIR/00CN/OAF/2012/0081* in which legal costs were determined at £550.00 and valuation fees at £450.00 plus VAT.

#### *Legal Costs*

24. In this case Mr Willson submitted that legal fees should be slightly higher because unlike Pavenham Drive Bishbury Close was not adopted.

25. Questioned by the Tribunal Mr Willson said the Estate was subject to a Scheme of Management under section 19 of the Act.
26. In response, to further questions Mr Wilson said that technically it was the responsibility of the Applicant (Leaseholder) to prepare the conveyance; however it was normal practice for the Trustees' solicitors to prepare the draft transfer in respect of sales on the Estate because they are non-standard and it made more sense.
27. The work is carried out by an assistant but Mr Willson is not sure if that person is qualified. However the work is supervised.
28. As to the time taken, Mr Willson considered 3 ½ hours to be reasonable as awarded in *Pavenham Drive* (above).

#### *Valuation Fees*

29. Mr Willson says he did not make an internal inspection of the property but has known these properties for 25 years and been inside many examples of the same house type. Not inspecting internally did save a little time, although this was limited.
30. His time was charged at £175.00 per hour plus VAT. A valuation fee of £400.00 plus VAT would therefore be appropriate.

#### **The Tribunal's Deliberations**

31. The Tribunal considered all the written and oral evidence submitted by the parties in reaching its conclusions.
32. This Tribunal is not bound by decisions of other Leasehold Valuation Tribunals which should not be regarded as forming any sort of precedent. Each case is considered on its own evidence.
33. The Tribunal treated with caution the anecdotal evidence of legal costs charged by the same solicitors to other clients. The relationship of the parties in those cases was unknown.

#### *Legal Costs*

34. The Tribunal, although not bound by, did consider the decision in *34 Rosafeld Ave* (above) and found it to be of little material assistance. At paragraph 40 *'There being no material representations made on behalf of the Respondent (Freeholder) the Tribunal accepted Mr Ritchie's submission and determined a reasonable figure for the Respondent legal fees at £385.00 plus VAT (if applicable) plus proper disbursements'*.
35. Having regard to the evidence of the parties the Tribunal concluded that the legal work should take no more than 3 hours with an additional ½ hour for supervising an unqualified assistant.
36. The Tribunal, after considering the evidence and relying on its knowledge and experience of such matters, concluded that £150.00 per hour was appropriate for an experienced unqualified assistant with ½ hour supervision at £180.00 per hour equating to a total fee of £540.00 (rounded to £550.00) plus VAT and disbursements.

*Valuation Fees*

37. On the evidence before the Tribunal the parties appear to agree that the time taken for the valuation should be between 2 and 2½ hours.
38. Mr Brunt suggested an appropriate fee would be £350.00 which equates to 2 hours work and Mr Wilson £400.00 which equates to just over 2 hours work at his rate of £175.00 per hour which the Tribunal finds to be reasonable.
39. Accordingly the Tribunal determines the valuation fee at £400.00 plus VAT.
40. Finally, the Tribunal determines that VAT is only payable by the Applicant if the Respondent is not registered for VAT for the reasons set out in paragraph 7 above.

Robert Brown  
Chairman

Dated            6 February 2013