



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BK/OC6/2015/0002**

Property : **16 Irving Street, Leicester Square,
London WC2H 7AF**

Applicants : **Griselda Catherine Enid Muir
John Andrew Stainton
Timothy John Stainton
(As trustees of the Stainton Estate)**

Representative : **Pemberton Greenish LLP,
Solicitors**

Respondent : **Woodblox Limited**

Representative : **Mr G Singh, Managing Director**

Type of Application : **Section 21 Leasehold Reform Act
1967 – determination of costs
payable**

Tribunal Members : **Judge John Hewitt
Mr Richard Shaw FRICS**

**Date and venue of
Determination** : **19 May 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **26 May 2015**

DECISION

Decision of the Tribunal

1. The Tribunal determines that the amount of costs payable by the respondent to the applicants pursuant to section 9(4) Leasehold Reform Act 1967 (the Act) is the sum of £9,854.60.
2. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The applicants are the registered proprietors of the freehold property at and known as 16 Irving Street [8].
4. The respondent is the registered proprietor of a lease dated 26 April 1948 of the whole of the property [11].
5. By a notice dated 19 October 2011 and given pursuant to the Act the respondent sought to acquire the freehold interest [21].
6. By a notice in reply dated 22 November 2012 the applicants did not admit that the respondent had the right to acquire the freehold on a number of grounds including that the property was not a house [29].
7. The applicants made an application to the County Court at Central London concerning the entitlement of the respondent to acquire the freehold interest. Evidently those proceedings were resolved in favour of the applicants and that the respondent was ordered to pay the applicants' costs of those proceedings which were assessed or agreed in the sum of £21,509.82, which sum has been paid.
8. By letter dated 19 December 2014 [45] the applicants' solicitors wrote to the respondent making a claim for costs of £9,854 said to be payable by virtue of section 9(4) of the Act. That letter stated: "*For the avoidance of doubt these costs are entirely separate to the costs we have incurred in connection with the Court proceedings*".
9. A follow up letter dated 27 March 2015 [46] to similar effect was sent to the respondent.
10. The respondent replied by letter dated 15 April 2015 [47] to the effect that all costs were determined by the court which ordered: "*the tenant to pay £21,509.82 as full and final payment of costs.*"
11. The subject application was received by the tribunal on 24 March 2015.
12. Directions were given and sent to the respondent on 26 March 2015 [52].

13. The parties were notified that the tribunal proposed to determine the amount of costs payable without an oral hearing, that any request for an oral hearing was to be made within 14 days and that if a request was made the application would be determined at an oral hearing on 27 May 2015. The tribunal did not receive a request for an oral hearing.
14. By letter dated 17 April 2015 [56] the applicants' solicitors wrote to the respondent to clarify that the costs claimed related to work carried out investigating its right to acquire the freehold and asserted those costs were payable pursuant to section 9(4) of the Act. A copy of that section was attached to the letter.
15. By a response dated 21 April 2015 the respondent said: "*As explained in our previous letter, We belief [sic] that these costs should have been assess by the judge dealing all legal costs, and you had every opportunity to submit these costs. The judge made a full and final assessment of the total costs which we have pain in full [sic in several respects].*"
16. By a letter dated 24 April 2015 [58] the applicants' solicitor made a detailed reply refuting that position.
17. The tribunal has received from the applicants' solicitors a page numbered volume containing material documents in compliance with directions.
18. Save as mentioned above it does not appear that the respondent has served a statement of case in answer to the application and has not, in terms, challenged the charge-out rates claimed, the time claimed for or the cost of a historical report claimed for.

The law

19. It does not appear to be disputed that the respondent served on the applicants a notice of its desire to have the freehold of the property under the Act.

20. Section 9(4) of the Act provides:

(4) 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 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;*

but so that 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.

The claim to costs

21. The claim is for £9,854.60 made up as to:

Solicitors' costs	£6,745.50
VAT	£1,349.10

Non-taxable disbursements:

Fee for historical report	£1,600.00
Rateable value fees	£ 120.00
Land Registry fees	£ 27.00
Company search fees	£ 13.00

22. The solicitors' costs are based on charge-out rates ranging between £125 to £395 depending on the grade and seniority of the fee-earner concerned.
23. The claim is supported by appropriate and material documents including a detailed breakdown of the work carried out and claimed for.

Discussion and findings

24. We are satisfied that the respondent has received a detailed bill of the costs claimed in the court proceedings and that it has received a detailed breakdown of the costs claimed in these proceedings. We find that the respondent has had the opportunity to compare to the two breakdowns to ascertain whether any duplication has occurred. No such duplication has been asserted by the respondent.
25. The respondent asserts that the applicants had the opportunity to submit the costs now claimed to the court but did not do so with the consequence that the judge in the court proceedings made a full and final determination of all costs payable by the respondent. No evidence to support that contention has been provided by the respondent.
26. The applicants' solicitors deny the above assertion. We accept that denial because it accords with our view that the respondent's assertion is inherently unlikely.
27. We infer that the court made an assessment of the costs incurred in the court proceedings only and that rightly the applicants' solicitors, who are respected and experienced in this field, did not include in the bill of costs filed in the court proceedings costs which fall within section 9(4) of the Act. We find that by virtue of section 21 (ba) of the Act this

tribunal has exclusive jurisdiction to determine the amount of any costs payable pursuant to section 9(4) of the Act.

28. No material has been provided to the tribunal to the effect that the assessment of costs by the court included any costs payable pursuant to section 9(4) or that the costs assessed by the court were to be in full and final satisfaction of all costs incurred by the applicants consequent upon the notice of claim made by the respondent.
29. The respondent has not challenged the quantum of costs claimed or the charge-out rates adopted, although it has had every opportunity to do so if it so wished.
30. In broad terms the costs claimed do not appear to be out of the ordinary from what is to be expected in the reasonable investigation by a landlord of a claimant's right to acquire the freehold.
31. In these circumstances we determine that costs of £9,854.60 are payable by the respondent to the applicants made up as shown in paragraph 21 above.

Judge John Hewitt
26 May 2015