



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

Case Reference : CHI/29UN/OC9/2021/0001

Property : 1 Penshurst Road, Ramsgate, Kent
CT11 8EG

Applicant: Julia Duncan

Representative: ---

Respondent: Keighley Investments

Representative: Azure Property Consultants

Type of Application: Landlord's costs for collective enfranchisement
Section 33(1) Leasehold Reform, Housing and
Urban Development Act 1993 ("the 1993 Act")

Tribunal Member: Judge P J Barber

Date of Decision: 18 June 2021

DECISION

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Decision

(1) The Tribunal determines in accordance with the provisions of Section 91(2)(d) of the 1993 Act, that the valuer's costs in a sum of £3,150.00 plus VAT shall be payable by the nominee purchaser.

Reasons

INTRODUCTION

1. The application received by the Tribunal was for a determination of the reasonable costs payable by the Applicant to the Respondent landlord, and being the landlord's valuer's costs for collective enfranchisement arising under Section 33(1) of the 1993 Act.
2. Directions were issued providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no such objections have been made and accordingly, the matter is being determined on the papers.
3. The Applicant has provided an electronic bundle of documents to the Tribunal, a section of which appended a copy of the application, and to which were attached various documents including:
 - (a) Letter dated 1 July 2020 from Azure Property Consultants ("Azure") to its Respondent client confirming basis of instructions re valuation of the building at 1 Penshurst Road.
 - (b) Letter dated 29 June 2020 from Mayo Wynne Baxter LLP to Azure, appending Section 13 Notice of Claim
 - (c) Section 13 Notice of Claim dated 29 June 2020.
 - (d) Various emails.
 - (e) Lease Analysis Sheets
 - (f) Comparable evidence
 - (g) Excel valuation sheets
 - (h) Long leaseholders' surveyor, Austin Gray's valuations.
 - (i) Various emails between Austin Gray and Azure.
 - (j) Emails dated 5 October 2020 between Austin Gray and Azure confirming an agreed consideration of £34,000.00 plus usual costs.
 - (k) Draft & final completion statements for completion 2 December 2020.

- (l) Emails from Mayo Wynne Baxter LLP to Respondent`s solicitors providing for completion on the basis that £3,150.00 + VAT for valuer`s fees was not agreed, and suggesting an alternative figure of £1,500.00 + VAT.
 - (m) Statements of case by the Respondent and by the Applicant (Pages 60-72 of the bundle)
 - (n) Various other miscellaneous correspondence including emails from and to the Tribunal office.
 - (o) Schedule completed by the parties with their respective comments on costs.
4. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

5. Section 33(1) of the 1993 Act provides that :-

“(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 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.

WRITTEN REPRESENTATIONS

6. The statement of case made by the Respondent referred to an error in the application, where it referred to a claim for valuation costs under Section 60(1) of the 1993 Act which should have been a reference to costs under Section 33(1). The statement confirmed that the costs in question are £3,150.00 plus VAT. The statement referred broadly to the qualifications and experience of the Respondent`s valuer, David Ford FRICS who is a director of Azure and who was stated to have 33 years` experience valuing properties throughout London, the south-east and the UK, including enfranchisement and expert witness work and whose charging rate is £300.00 plus VAT per hour. Reference was also made to a second valuer, Andy

Reaney, being Azure's Property Manager, with 14 years' experience and a charging rate of £150.00 plus VAT per hour. Azure managed the Property for the Respondent; upon instruction, David Ford had advised that fees for the collective valuation would be capped at £450.00 plus VAT per flat, totalling £3,150.00 plus VAT. The statement referred to Azure having read all seven leases and deeds of variation; similarly, to Azure corresponding with leaseholders, arranging inspections, and taking photographs. David Ford had researched comparables within the Ramsgate area and produced a table and spreadsheet; all the flats were different configurations, save for Flats 2 & 4. David Ford had reported to the Respondent to provide a figure for the counter notice; discussion ensued, and a compromise was then reached regarding the consideration to be paid for the freehold. The long leaseholders' solicitor had questioned the valuation fee of £3,150.00 plus VAT in the completion statement, requesting a reduction to £1,500.00 plus VAT which was declined. A question was raised over whether or not a breakdown had been sought at that stage. The long leaseholders' solicitors were stated to have questioned formally the valuation fee of £3,150.00 plus VAT at completion; completion had then occurred on the basis of half the fees being retained.

7. The statement in response made by the Applicant broadly provided that Mr Stewart Gray had been the valuer for the long leaseholders, and that he has 46 years' with his firm of which he is now senior partner, being Austin Gray Estate Agents; the statement indicated that Mr Gray is an FRICS, and is described by his firm as an expert in valuations for leasehold enfranchisement. Mr Gray had travelled from Brighton to Ramsgate to carry out the valuation and his fees had been £1,500.00 plus VAT. The statement questioned the issue as to the date when the Respondent's valuer's fee had first been questioned; it was also stated that completion occurred so as to avoid delay, subject to the outstanding dispute regarding David Ford's fees which were based upon £450.00 plus VAT per flat.
8. The Schedule in regard to the disputed costs included various comments by the parties including reference to the long leaseholders' proposal of £29,215.00 as the appropriate consideration to be paid for acquiring the freehold, and the sum of £39,494.20 proposed by the Respondent. The schedule indicated that the valuers had reached agreement on value in the sum of £34,000.00. The Respondent inserted figures for costs in the schedule for each element of work, together with indications as to time spent, although these cross references, apparently to certain numbered documents, were not entirely clear; the sums so referred, amounted in total to £4,515.00 plus VAT. The Respondent stated that the fees had nevertheless been held at the agreed cap of £3,150.00 plus VAT.

CONSIDERATION

9. The Tribunal has taken into account all the case papers in the bundle.

10. The issue for determination is whether the costs claimed under Section 33(1) of the 1993 Act are the reasonable costs of and incidental to any valuation of any interest in the specified premises.

11. In regard to the Schedule, some of the cross references to numbered documents were unclear; however, the largest items forming part of the total of £4,515.00 were as follows:

£1,575.00 – Reading all 7 leases – 45 minutes each

£600.00 – Inspecting 6 flats

£750.00 – Research of comparables

£1,200.00 – Producing Excel valuations based on lease analysis comparables and statutory basis for valuations

12. The Respondent had indicated in its statement that all the flats were different leases, except Flats 2 & 4 which had the same lease terms; given Mr Ford`s long experience it might be reasonable to expect him to have been able to spend a shorter period, namely 30 minutes per lease, in reading. On the basis of his hourly rate of £300.00 plus VAT, that would result in a total for reading of £1,050.00 plus VAT, rather than £1,575.00 plus VAT. In regard to the inspections, the Schedule indicated that Mr Ford had spent from 9.00am to 10.30am, but had to return at 12.00 for one of the flats; accordingly, the figure indicated of £600.00 for two hours of time would not appear to be unreasonable. The Schedule indicated a figure of £750.00 for researching comparables and producing a comparables evidence table, indicating that Mr Ford had spent 2.5 hours on such research. Again, taking his experience into account, a more reasonable period would be 2 hours resulting in a figure of £600.00 plus VAT, rather than £750.00 plus VAT. In regard to the figure of £1,200.00 in the Schedule, this appeared to relate to producing Excel valuations based on lease analysis, inspections, comparables and statutory basis and equates to 4 hours of work. The Tribunal considers, taking account of Mr Ford`s experience, that 2.5 hours should have sufficed, rather than 4 hours as claimed; this would result in a figure of £750.00 plus VAT rather than the £1,200.00 claimed. The above adjusted figures would be as follows:

£1,050.00 – Reading all 7 leases

£600.00 – Inspecting 6 flats

£600.00 – Research of comparables

£750.00 – Producing Excel valuations

The above would result in the total of £4,515.00 plus VAT being properly adjusted or reduced by £1,125.00, down to £3,390.00 plus VAT. However, even after adjustment, such total remains higher than the fee actually charged, based on a cap of £450.00 per flat, in a total of £3,150.00 plus VAT.

13. With regard to Mr Ford`s hourly rate of £300.00 plus VAT, the Tribunal considers this to be towards the higher end of the spectrum of hourly rates, although the Tribunal takes into account the fact of Mr Ford`s lengthy experience, location and qualifications, and considers such rate not to be wholly unreasonable. The Tribunal also takes into account the fact that the Respondent`s valuer had agreed a charging rate for this work, based on a capped amount of £450.00 per flat. Despite the issues referred to in the preceding paragraph, the amount charged being £3,150.00 plus VAT, still remains less than the downwardly adjusted gross amounts as inserted by the Respondent in the Schedule.

14. In regard to the fee of £1,500.00 plus VAT charged by the long leaseholders` own valuer Mr Gray, it does not necessarily follow that the fees of the respective valuers should be precisely or even closely the same; Mr Gray may have agreed such a rate for his services with the long leaseholders taking into account different market factors to those applicable to the Respondent`s valuer. Mr Ford appears to have been the senior in-house valuer for the Respondent`s appointed agents Azure, and it would not be unreasonable for the Respondent to retain his services, through their instructions to Azure and at different rates to those pertaining to the one-off services being obtained by the long leaseholders from Mr Gray.

15. Section 33(1) makes broad allowance for any valuation costs of and incidental to the valuation of any interest in the Property; the Tribunal considers that the heads of work as identified by the Respondent in the Schedule are in principle reasonable and within Section 33(1). Accordingly, for the reasons stated above and on the basis of such evidence actually provided in the bundle, the Tribunal accepts that the amount claimed for valuation costs, being £3,150.00 plus VAT, is reasonable.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.