



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

Case Reference : **MAN/00CK/OC6/2015/0003**

Property : **77 Cloverfield, West Allotment,
Newcastle upon Tyne NE27 0BE**

Applicants : **Keith Buglass and Lena Patricia Buglass**
Representative : **(unrepresented)**

Respondent : **Aviva Investors GR SPV 8 Limited**
Representative : **Brethertons LLP**

Type of Application : **Application under subsection 21(1)(ba) of the
Leasehold Reform Act 1967 for determination
of the reasonable costs payable under
subsection 9(4) of the Act**

Tribunal Members : **Judge S. Moorhouse LLB
Mr I.D. Jefferson FRICS**

Date of Decision : **7 January 2016**

DECISION

DECISION

Legal and valuation costs in the total sum of £2044.20 (inclusive of VAT and disbursements) are payable by the Applicants to the Respondent pursuant to subsection 9(4) of the Leasehold Reform Act 1967.

REASONS

The Application

1. The Applicants were granted a lease of the house 77 Cloverfield, West Allotment, Newcastle upon Tyne NE27 0BE ('the Property') by the then freeholder Bellway Homes Limited on 30 October 2009 for a term of 125 years commencing on 1 January 2008. The Applicants are in the course of acquiring the freehold interest in the Property from the current freeholder, the Respondent, and have confirmed that a price of £4,000 has been agreed for the purchase and that the terms of acquisition have been agreed.
2. The Applicants have made the Application under subsection 21(1)(ba) of the Leasehold Reform Act 1967 ('the Act') for a determination by the Tribunal of the reasonable costs payable by the Applicants to the Respondent in connection with such freehold acquisition pursuant to subsection 9(4) of the Act.

The Law

3. The relevant statutory provisions are set out at subsections 21(1)(ba) and 9(4) of the Act:

Subsection 21(1)

'The following matters shall, in default of agreement, be determined by a tribunal namely, -

(ba) the amount of any costs payable under section 9(4) or 14(2);'

Subsection 9(4)

'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of the 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.'

Submissions

4. The costs in issue are as follows:

Legal fees of £1500 plus VAT of £300 and disbursements of £12 (charged to the Respondent by Brethertons LLP)

Valuation fees of £600 plus VAT of £120 and disbursements of £3 (charged to the Respondent by LBB Chartered Surveyors)

Total Respondent's costs: £2535

5. The Respondent has supplied a schedule giving a breakdown of the £2535 total. In the case of legal fees it is stated that the matter is worked on a fixed fee of £1500 plus VAT of £300.
6. There then follows a detailed time record by reference to date and the type and details of the work done. This is costed at the hourly rate of £225 plus VAT for work undertaken by Solicitor and Head of Department Roger Hardwick and the hourly rate of £140 plus VAT for work undertaken by Trainee Solicitor Pasqualina Marcucci. Time is recorded in units of 6 minutes and gives rise to a total legal fee of £1852 plus VAT. This is adjusted down to the stated fixed fee of £1500 plus VAT, the balance of £352 plus VAT being written off.
7. Within the detailed time record most of the time is incurred by Pasqualina Marcucci. The total recorded time for both fee earners comes to 12 hours 42 minutes. Some of this relates to letters and emails and there are larger time commitments recorded for tasks such as perusing documents and drafting. Some of the time is stated to relate to matters relating to the costs themselves, such as researching whether a copy valuation report is necessary to justify section 9(4) costs and the preparation of the schedule of costs.
8. The Respondent has submitted a First-tier Tribunal decision dated 20 December 2013 relating to The Post Box, Upper Marshall Street, Birmingham B1 1LA in which Brethertons LLP represented the applicant Post Box Ground Rents Limited (the respondent being The Post Box RTM Company Limited) together with the Upper Tribunal decision on appeal issued on 20 April 2015. The Respondent states that whilst Mr Hardwick's hourly charge rate is currently £350 per hour plus VAT, this has been reduced in the schedule of costs to £225 per hour plus VAT as this was deemed reasonable by the First-tier Tribunal and the Upper Tribunal in these decisions.

9. The valuation fees are supported by a copy invoice dated 26 November 2014. The fees are stated to relate to the 'preparation of our Desktop Report in respect of the enfranchisement purchase price payable in respect of the above.' The Tribunal does not have the benefit of a copy of the valuation report.
10. The Applicants' case can be summarised as follows:-
11. The Applicants refer to long delays in the process. They expressed interest in purchasing their freehold in 2013 and in September 2014 were advised that the freeholder would not deal with the transaction unless they served formal notice, which they did on 6 November 2014. The Applicants submit that there were various further delays and the transfer document was not received by the Applicants' solicitor until September 2015 following agreement being reached on price.
12. The Applicants submit that the legal fees were originally estimated at £1750 plus VAT and were only reduced after the Applicants pointed out that a friend was being charged £1500 plus VAT in similar circumstances. The Applicants submit that the schedule of costs is irrelevant given that the fees are fixed. The Applicants further contend that the legal fees should be less than those incurred by them on their original leasehold house purchase (in respect of which an invoice in the sum of £891.25 is submitted in evidence).
13. With regard to the hourly charge rate, the Applicants submit that Brethertons LLP is not a London firm therefore London prices should not apply and that the tribunal decisions submitted by the Respondent in support of Mr Hardwick's hourly charge of £225 plus VAT related to a case far more complex than the present one.
14. The Applicants submit that very little work would have been required on the part of Brethertons LLP, essentially one official form (the Land Registry form) was completed and correspondence was required. The Applicants submit that legal fees of £500 (including VAT) would be more appropriate.
15. The Applicants contend that no valuation fees should be payable by them on the basis that the price was agreed and a valuation should not therefore have been required. If valuation fees are payable then the Applicants contend that a bill of £300 (including VAT) would be more appropriate. They contend that the desktop valuation (which they have not seen) would have necessitated a calculation on a 'value my home web site' or similar and that the fee level is ridiculously high for a desktop valuation.

Determination

16. The remit of the Tribunal is to determine whether the costs in issue are payable pursuant to subsection 9(4) of the Act. The purchase price and any other terms of the Applicants' purchase are outside the scope of this determination.

17. Subsection 9(4) requires that the Applicants bear 'the reasonable costs of or incidental to the following matters' and goes on to list specific matters. The costs must also be 'incurred pursuant to the notice' which the Tribunal finds in this case was dated 6 November 2014.
18. Addressing first the Applicants' submissions on the issue of delay, neither the legal fees nor the valuation fees pre-date, even in part, the Applicants' notice dated 6 November 2014. The Tribunal finds therefore that any costs incurred by the Respondent prior to the date of the Applicants' notice are not being charged to the Applicants. With regard to costs incurred after the date of the Applicants' notice (as set out within the Respondent's schedule of costs), whilst the Applicants' purchase negotiations do appear to have been protracted, there is no evidence before the Tribunal that costs have been inflated as a consequence. The Tribunal therefore makes no adjustment to costs on account of the issue of delay.
19. The Tribunal notes that the Respondent's legal fees are 'fixed' at £1500 plus VAT and that it appears that the fixed fee is less than the amount originally estimated and notified to the Applicants. The issues for the Tribunal to determine are whether the costs that the Respondent seeks to recover from the Applicants are incurred in pursuance of the Applicants' notice, whether they are reasonable and whether they relate to (or are incidental to) the matters listed in subsection 9(4). In determining these issues the Tribunal is required to consider the evidence before it, including the information supplied by the Respondent as to the type and details of work done, the time incurred and the charge rates applied. It is relevant therefore for the Tribunal to review the schedule of costs, notwithstanding that the Respondent's legal costs are limited to the amount of the 'fixed fee'.
20. The Applicants have demonstrated that the legal costs they incurred upon the grant of their lease are significantly less than the costs sought by the Respondent on their freehold purchase. The Tribunal finds that the two matters are not directly comparable. The Tribunal does not accept the Applicants' contention that the legal work required to be undertaken on the Respondent's behalf was limited to one official document plus correspondence, however the Tribunal does consider that the legal work required was relatively straightforward.
21. On the issue of hourly rates for legal fees, the Tribunal has reviewed the First-tier Tribunal and Upper Tribunal decisions submitted by the Respondent. The Tribunal finds that the previous First-tier Tribunal did accept an hourly charge rate for Mr Hardwick of £225 plus VAT, but finds that this was not in issue on appeal. This is not therefore a matter of precedent binding the Tribunal in the present case.
22. Nevertheless the Tribunal considers the rate of £225 plus VAT for a head of department with the specialist knowledge and experience that Brethertons LLP attribute to Mr Hardwick on their website to be reasonable for a firm based outside of London. The Tribunal does not therefore consider that Mr Hardwick's charge rate of £225 plus VAT amounts to 'London pricing'. The Tribunal has considered the Applicants' submission that the First-tier Tribunal

decision submitted by the Respondent relates to a more complex case than the present one. The Tribunal considers that differences in complexity do not necessarily impact on the hourly rate that may reasonably be adopted although complexity will undoubtedly impact upon the number of hours incurred. In the present case the Tribunal finds Mr Hardwick's hourly rate to be reasonable.

23. The rate hourly rate of £140 for Pasqualina Marcucci's time as a Trainee Solicitor has not been specifically challenged by the Applicants. This equates to 62% of the Head of Department rate and in the absence of any evidence to the contrary the Tribunal finds this to be reasonable.
24. The Tribunal has considered whether the legal costs described within the Respondent's schedule of costs fall within the scope of subsection 9(4). The Tribunal finds that certain costs relate to the issue of cost recovery and that these do not represent reasonable costs 'of or incidental to' the matters listed in the subsection. These costs are described in the schedule and costed, exclusive of VAT, as follows:

'Research - whether a copy of the valuation report is necessary to justify Section 9(4) costs' (£64.50)

'Letter in - Tribunal' (£14)

'Preparation - Schedule of Costs' (£187.50)

25. The Tribunal has considered also whether the time stated to have been incurred by Brethertons LLP on various items within the schedule of costs appears to be reasonable. The Tribunal finds that the time stated to have been spent on the following items is unreasonable and that it would be reasonable to make the adjustments indicated (all figures being exclusive of VAT):

'Research - validity of notice served' (£162.50) - adjusted by the Tribunal to £81.25 (a reduction of 50%) having regard to the time already incurred on document review and the firm being well versed in this type of work

'Drafting - notice in reply' (£207.50) - adjusted by the Tribunal to £103.75 (a reduction of 50%) having regard to the work already undertaken and the firm being well versed in this type of work

'Perusal lease terms' and 'Drafting-transfer document' (total of £417.50) - adjusted to £207.50 on the basis that one hour (10 units) of Trainee Solicitor time and 18 minutes (3 units) of Head of Department time should be more than adequate to check the lease and draft the transfer.

26. The Tribunal has considered whether the remaining legal costs, having made these deletions and adjustments, were 'incurred pursuant to the notice' and finds that they were.
27. With the deletions and adjustments referred to above the legal costs determined by the Tribunal to be payable pursuant to subsection 9(4) come to

£1191 plus VAT. The fixed fee of £1500 plus VAT is therefore irrecoverable in part - the amount payable is limited to the Tribunal's determination.

28. Turning to the issue of valuation fees, the Tribunal has considered the Applicants' contention that valuation fees need not have been incurred because the price was fixed by agreement. The Tribunal finds in the Respondent's favour on this issue: having received formal notice from the Applicants' the Respondent was entitled to commission a valuation and to recover the reasonable cost under subsection 9(4)(e) of the Act. The Tribunal has considered also whether the valuation fees were 'incurred in pursuance of the notice' within the meaning of subsection 9(4) and finds that they were.
29. It is clear to the Tribunal from the invoice that has been produced that the valuation was undertaken on a desktop basis. The Tribunal considers that this would have involved less expense than a valuation informed by an inspection. The Tribunal has considered the Applicants' contention that a desktop valuation could have been undertaken on a 'value my home' type website but does not accept this contention because the 'sale value' of the Property is relevant to only a part of the valuation calculation required.
30. The Tribunal has only limited information before it but finds that, even taking into account that the valuation was undertaken by a London based firm of Chartered Surveyors, the fees of £600 plus VAT are somewhat high for a desktop report. Applying its own knowledge and experience the Tribunal considers that a fee of £500 plus VAT would be reasonable.
31. Disbursements totalling £12 and £3 are stated to have been incurred by the Respondent's solicitors and valuers respectively. These sums have not been challenged and the Tribunal finds that they are payable under subsection 9(4).
32. Accordingly the Tribunal determines that the following costs are payable by the Applicants to the Respondent pursuant to subsection 9(4):

Legal fees	£1191.00
Valuation fees	<u>£500.00</u>
Subtotal	£1691.00
VAT @ 20%	£338.20
Disbursements	<u>£15.00</u>
Total	£2044.20