



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

Case Reference : **BIR/00CN/OC6/2019/0001**

Property : **31 Whitburn Ave, Birmingham, B42
1QH**

Applicant : **Mayfair Charities Limited**

Representative : **Wallace LLP, Solicitors**

Respondent : **ARN Assets Limited**

Representative : **Legal Studio Solicitors**

Type of Application : **Application for a reasonable costs
order under sections 21(1)(ba) and
21(2) of the Leasehold Reform Act
1967**

Tribunal Members : **Judge C Goodall
Mr D Satchwell FRICS**

Date of Decision : **16 April 2019**

DECISION

Background

1. The Applicant is the current lessee of 31 Whitburn Ave, Birmingham, B42 1QH (“the Property”) under a lease for 99 years from 25 December 1937 (i.e. expiring on 24 December 2036). The freeholder is Hanlo Holdings Ltd (“the Freeholder”), which has taken no part in these proceedings.
2. On 18 October 1961, an underlease of the Property was granted for a term expiring three days before 24 December 2036 and at a ground rent of £10 per annum. The Respondent is the current lessee of that underlease.
3. On 23 May 2017, the Respondent’s predecessor in title served a Notice of Claim under the Leasehold Reform Act 1967 (“the Act”) to acquire the freehold. On 7 June 2017, that predecessor in title assigned his interest in the Property to the Respondent, together with the right to pursue the claim to purchase the freehold. It transpired that in fact the Respondent did not proceed with the purchase of the freehold.
4. Section 9(4) of the Act provides that, except in limited circumstances, the person who served the Notice of Claim has to bear the landlord’s reasonable costs of or incidental to:
 - (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.
5. This case is about determining the amount of costs payable by the Respondent to the Applicant, as these have not been agreed.
6. Neither party requested a hearing. The Tribunal has not inspected the Property, for there would be no purpose in doing so. This determination has been made on the basis of consideration of a hearing bundle prepared by the Applicant’s solicitors. Apart from the inclusion in a schedule of costs of comments by the Respondent on detailed costs items, no representations have been received by the Tribunal from the Respondent.

Costs claimed

7. The Applicant claims the sum of £1,204 solicitor’s costs, £350 valuation costs, and £21 land registry fees.
8. The bundle of documents contains an itemised schedule of the solicitor’s costs, showing 25 separate costs items. Their work was carried out by three

grades of fee earner – a partner, charging £475 per hour, an assistant solicitor, charging £350 per hour (rising to £365 in August 2017), and a paralegal charging £200 per hour. The Respondent claimed these charge out rates were excessive, and proposed rates used in court litigation of £317 per hour for solicitors and £126 per hour for paralegals.

9. The solicitors say that a total of 3.9 hours has been spent on the case.
10. In addition to solicitor's costs, valuation fees of £350 have been claimed for work carried out by Chesterton's in London on the preparation of a valuation of the Applicant's interest in the Property. This in fact took an hour to prepare, and the valuer's charge out rate is £425 per hour, but it seems the fee was an agreed fee at the outset, and the claim has been limited therefore to £350.00.

The Tribunal's decision

Solicitor's costs

11. The Tribunal was mindful of the two statutory constraints upon recovery of costs; firstly that they must be reasonable, and secondly that they can only be charged for work which falls within the parameters of section 9(4).
12. So far as solicitor's charge out rates are concerned, and whilst it acknowledges that the decision is not technically binding upon it, the Tribunal agrees with the approach taken by the first-tier tribunal in the case of *Daejan Investments Freehold Ltd v Parkside 78 Ltd (LON/ENF/1005/03)*, in which the Tribunal noted that leasehold enfranchisement cases were a form of compulsory purchase from an unwilling seller, and sellers should not be further out of pocket through using their chosen solicitors, even if they were not the cheapest solicitors available. The statutory provision therefore allows a full indemnity for solicitor's costs. In other words, the solicitor's charge out rates should be paid unless they are unreasonable. We do not find the charge out rates to be unreasonable for specialist enfranchisement solicitors in London, and we allow these rates in this case.
13. The Tribunal has numbered each of the 25 specifically charged items in the schedule of costs at pages 14 and 15 in the bundle. It notes that items 5, 7, 8, 13, 15, 17, and 21 were agreed, save for the challenge to the hourly rate. In the light of the previous paragraph to this decision, there is no need for any further consideration of these items which the Tribunal allows as claimed.
14. Items 1 (£175.00) and 2 (£38.50 claimed but this is a miscalculation and should be £35.00) are a claim for 36 minutes of time spent by the assistant solicitor in perusing the claim form and telephoning the client. In our view, it is reasonable to spend this amount of time in initial consideration of the claim and these items are allowed. Although the Applicant was not the competent landlord in this case, it still had an interest in the land which

would require to be compensated for if it was compulsorily purchased. This work fell squarely within the category of work needed to establish whether the Respondent had the right to purchase the freehold, including the Applicant's leasehold interest. Item 2 though has been charged at the wrong rate. £35.00 is allowed, not £38.50.

15. Item 3 is paralegal work to obtain office copy entries. 12 minutes are claimed at a cost of £40.00. The Tribunal considers this work is purely administrative and the cost should be included within the overheads included in fee earners charging out rates. It is not allowed.
16. Item 4 is a claim for 18 minutes of assistant solicitor time to peruse the office copy entries and title documents. This is entirely reasonable in order to establish the right to purchase the freehold and is allowed at £105.00.
17. Item 6 (£35.00) is a claim for writing a letter (6 minutes) to instruct the valuer to value the Applicant's interest. This is allowed. The Respondent objects because the Applicant was not the competent landlord, but the value of the Applicant's interest still had to be calculated, and the cost of valuation is a legitimate head of claim. The Tribunal consider this item to be incidental to the costs of valuation.
18. Items 8 to 12 and items 14 and 16 (£180.00 in total) are claims for paralegal work to obtain information about the rateable value of the Property. A total of 54 minutes is claimed for this work. The Tribunal disallows all of this work. Firstly, it duplicates work done by the valuer (see page 38 of the Bundle). Secondly, it should have been apparent from the initial review of the documents that it was vanishingly unlikely that the rateable value of the Property would justify a valuation on any basis except section 9(1) of the Act. It is a small terraced property in an intensively developed area of Birmingham. Thirdly (if the Tribunal is wrong to disallow the whole item), it is excessive for establishing a rateable value.
19. Item 18 is disallowed. This was a chasing email to the valuer as to when his report would be available. Even if it was needed, it is difficult to see why the Respondent should have to pay because the Applicant's own expert had delayed in providing his report to his own client.
20. Item 19 is also disallowed. This was an email enquiry to the Applicant to establish whether they had a copy of their own lease. It would not be reasonable for the Respondent to have to pay for the Applicant to provide its own lease to its own solicitors. In any event, it should have been requested within item 2 or 5, at the commencement of the case, rather than six weeks later.
21. Item 20 (£70.00) is allowed. This was a discussion with the client about the response to the Claim Notice. The Tribunal considers this was work incidental to the establishment or otherwise of the Respondent's right to

purchase, as the conclusion of that investigation has to be communicated to the Respondent and the Applicant has to agree that with his solicitor.

22. Item 21 is also allowed. It is for £35 for writing a letter to the competent landlord. This is the first reference to substantive engagement with the competent landlord concerning the response to the Claim Notice and in the Tribunal's view falls within the parameters of work "incidental to" the investigation of the Respondent's right to purchase the freehold. Some communication between the holders of the superior interests in the Property would be expected and would fall within the parameters of work incidental to the establishment of the Respondent right to purchase.
23. Items 22 and 23 are allowed. These are claims for reviewing the valuers report and speaking to him on the telephone, totalling 12 minutes altogether, and at assistant solicitor rate. This is clearly work which is incidental to obtaining the valuation.
24. Item 24 (£105.00) is for time spent reviewing ground rent demands received by the Applicant as the competent landlord had not responded to contact and the ground rent demands provided contact details to enable the Applicant to contact it. This work does seem to relate to establishing whether the Respondent had the right to purchase the freehold, as the Applicant's eventual conclusion on that question has to be discussed with the freeholder and communicated. It is allowed.
25. Item 25 (£73.00 at the assistant solicitor's new hourly rate from August 2018 of £365.00 per hour) is for time spent by the assistant solicitor in reviewing the Notice in Reply. Although it was not for the Applicant to serve this, to the Tribunal this is the culmination of the process of establishing whether the Respondent had a right to purchase the freehold, for it is the culmination of that work, and records the view that has been established. It falls within the parameter therefore of work to establish the Respondent's right to purchase and is allowed.
26. In summary, items 1, 2, 4, 5, 6, 7, 13, 15, 17, 20, 21, 22, 23, 24, and 25 are allowed at the rates claimed. The Tribunal calculates that the sum allowed is £925.50.
27. The Tribunal determines that the solicitor's costs of the Applicant, payable under the Act by the Respondent, are £925.50.

Valuer's fees

28. The claim for £350 is allowed. Even for an intermediate lessor's interest, compensation is payable, and a valuation will need to be carried out. The rate of charge is fair and reasonable. The work falls within section 9(4)(e) of the Act.

Disbursements

29. There is a claim for £21 of land registry fees. The Respondent agrees this claim. It is therefore allowed.

VAT

30. If the Applicant is VAT registered, it should recover VAT on the professional fees supplied to it itself rather than pass them on the Respondent. No VAT is payable unless the Applicant is not VAT registered. If that is the case, the Respondent must also pay the VAT on the fees approved in this decision.

Appeal

31. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)