



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

**Case Reference** : **BIR/47UB/0C9/2019/0007**

**Property** : **28 Chadcote Way, Catshill, Bromsgrove,  
B61 0JT**

**Applicant** : **Rachel Louise Colston**

**Representative** : **Anthony Brunt & Co Surveyors & Valuers**

**Respondent** : **Benjamin William Nield**

**Type of Application** : **Application under Section 21(1)(ba) of  
the Leasehold Reform Act 1967 for a  
determination of the landlord's  
reasonable costs payable pursuant to  
section 9(4) of the Act**

**Tribunal Members** : **Judge M K Gandham  
Mr D Satchwell FRICS**

**Date and venue of  
determination** : **Paper Determination made on 29th  
November 2019**

**Date of Decision** : **16 January 2020**

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**DECISION**

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## Decision

1. The Tribunal determines that the Respondent's reasonable legal costs in dealing with the matters referred to in section 9(4) of the Leasehold Reform Act 1967 ('the Act') are **£761** (plus VAT) and the reasonable valuation fees are **£600** (no VAT is payable on the same).

## Reasons for Decision

### Introduction

2. On 14<sup>th</sup> June 2019, the Tribunal received an application from Rachel Louise Colston ('the Applicant') in respect of the property known as 28 Chadcote Way, Catshill, Bromsgrove, B61 0JT ('the Property'). The application was for a determination of the proper price payable for the freehold of the Property, a determination of the landlord's costs payable by the tenant under section 21(1)(ba) of the Act and the terms of the conveyance.
3. The application under section 21(1)(ba) of the Act was originally stayed (at the request of the Applicant) and the Tribunal's decision in respect of the price payable was issued on 28<sup>th</sup> August 2019, the terms of the conveyance having already been agreed. On 29<sup>th</sup> August 2019, the Tribunal issued new directions in relation to the application for costs.
4. Submissions and counter submissions were received from both the Applicant and Benjamin William Nield ('the Respondent'). The Respondent's submissions included a detailed schedule of costs ('the Costs Schedule') which detailed the work undertaken by DMH Stallard LLP, the Respondent's solicitors, together with a breakdown of the Respondent's valuation fees. Neither party requested an oral hearing.

### The Law

5. The relevant law is set out below:

#### ***Leasehold Reform Act 1967, section 9(4)***

*(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.*

### **Applicant's Submissions**

6. The Tribunal received a Statement, dated 4<sup>th</sup> October 2019, from the Applicant's Representative, Mr Brunt, enclosing submissions together with a reply to each of the items referred to in the Costs Schedule.
7. Mr Brunt confirmed that in two recent transactions in the Midlands region he had dealt with matters in connection with section 9(1), where legal costs charged had been £575 and £550, plus VAT and disbursements, respectively. He stated that he had also dealt with a recent transaction within the Bournville Village Trust where the costs charged had only been £650 (net of VAT and disbursements) even though that particular property lay within a managed estate.
8. Although Mr Brunt agreed that the Respondent had the freedom to choose whichever solicitors he wished, he stated that the costs should not be more than those that the Respondent would be willing to pay if he were responsible to pay those costs himself. In addition, he stated that, in his experience, most solicitors did not charge hourly rates in these type of matters but a fixed fee based on their experience of the amount of work involved. He included, within his submissions, a 2012 press article regarding the practise of solicitors charging hourly rate fees.
9. Mr Brunt submitted that the tenant was liable for preparing the conveyance in matters under section 9(1) and that the work in this matter was not overly complicated as the freehold was registered and had only been purchased a few years previously by the Respondent.
10. In reply to the items detailed in the Costs Schedule, Mr Brunt agreed to some costs but submitted that others were either excessive or not payable. This resulted in him considering that 2.7 hours was a reasonable amount of time spent in dealing with the matter. He also noted that a qualified legal executive had carried out the vast majority of the work.
11. In relation to the valuation report, Mr Brunt noted that the Respondent, who is chartered surveyor, carried out an external inspection in January 2019 but that he did not carry out a full inspection.
12. Mr Brunt agreed that the Respondent could charge for a valuation, even when acting on his own behalf, but stated that the Respondent could not charge for time spent in negotiations nor could he or his solicitors charge for time spent in connection with the application to the Tribunal.

13. He considered that 1.5 hours would be a reasonable amount of time for carrying out the inspection, research and valuation.

### **Respondent's Submissions**

14. On 13<sup>th</sup> September 2019, in accordance with the Tribunal's Directions, the Respondent submitted a detailed Costs Schedule to the Applicant. These detailed the Respondent's legal costs as £1,826 plus VAT and the valuation costs as £740.
15. After receipt of the Applicant's submissions, the Respondent submitted a Statement of Case, which included replies to each of points raised by the Applicant in relation to the items detailed in the Costs Schedule. The Respondent, having agreed to some of the Applicant's points in relation to the legal costs (but not the valuation costs), revised the reasonable legal costs to £1,769 plus VAT.
16. The Respondent confirmed that the legal costs were charged by reference to time spent on the matter by the relevant fee earner. These included: a Partner at a charge out rate of £300 per hour; an Associate (whom the Respondent described as a specialist enfranchisement Chartered Legal Executive (FCILEx)) at a charge out rate £190 per hour and a specialist Chartered Legal Executive at a charge a rate of £175 per hour.
17. The Respondent referred to the principles set out in *Daejan Investments Limited –v- Parkside 78 Limited* LON/ENF/1005/03 and submitted that a landlord should not be out of pocket through using their chosen solicitor. The Respondent stated that the hourly rates charged by his solicitors were much lower than the hourly rates which the Tribunal in the *Daejan* decision had considered reasonable. The Respondent also pointed to the fact that he had been required to contribute a sum of £690 plus VAT towards the conveyancing fees of his vendor when he had purchased the freehold interest in the Property in January 2017, which he stated was a far more straightforward transaction.
18. The Respondent stated that, although a tenant's solicitors are usually responsible for drafting the conveyance, the freehold title in this matter included additional land and it was considered prudent for the Respondent's solicitors to draft the same to ensure that any relevant rights were included in the transfer. In addition, he pointed to the fact that the Applicant's solicitors had, at no point, indicated that they had prepared a draft, in fact they had, in email correspondence, requested a draft for approval from the Respondent's solicitors.
19. In relation to the valuation costs, the Respondent confirmed that he was a RICS Registered valuer with experience in leasehold enfranchisement. He had included, within his submissions, details of the time spent undertaking the valuation and copies of email correspondence relating to investigations of the rateable value of the Property.

20. Finally, the Respondent noted that Mr Brunt had not queried the amount of the hourly rates charged for the legal work or valuation, rather the time spent and whether certain items should have been included in the costs.

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

21. The Tribunal considered all of the written evidence submitted by the parties and made its determination by firstly considering which services would be recoverable under Section 9(4) of the Act, secondly by considering the time that should reasonably be taken to deal with those matters and finally the reasonable charge for the work carried out. The Tribunal is not bound by previous decisions of the tribunal.

### **Legal costs**

#### ***Items recoverable under Section 9(4)***

22. Section 9(4) of the Act is quite clear in its wording. It confirms that items that are payable are “*reasonable costs of or incidental to*” any of the matters referred to in parts (a) to (e) of that subsection.
23. Following the decision of the Upper Tribunal (Lands Chamber) in the case of *Sinclair Gardens Investments (Kensington) Limited v Paul Kenneth Charles Wisby and Lesley Barbara Mary Wisby* [2016] UKUT 203 (LC) the Tribunal considers that the costs of the Notice in Reply are *incidental to* those matters referred to in section 9(4) of the Act. In this matter; however, the Tribunal note that the Respondent’s solicitors have also detailed time spent for drafting a Notice deducing title, which they subsequently did not send as they decided that sufficient information had already been provided by both the Respondent and the Applicant’s representative. The Tribunal does not consider that any time spent in drafting superfluous documents as being reasonable or recoverable under the Act.
24. Although the Tribunal notes that it is generally within the remit of a leaseholder’s solicitors to draft the transfer in relation to the purchase of the freehold of a property, in this particular matter the Applicant’s solicitor, in their email of 4<sup>th</sup> July 2019, requested the draft Transfer from the Respondent’s solicitors. As such, the Tribunal considers that the drafting of the transfer, and investigation of the rights required in relation to the same, to be matters which are reasonable in pursuance of the conveyance.

#### ***Time taken***

25. The Tribunal notes that the solicitors, according to the Costs Schedule, appear to have spent nearly four hours considering the Notice and its effect, advising the Respondent and drafting the various notices in reply. Considering that the Respondent, in his submissions, described the Associate dealing with this work as a “*specialist*” in enfranchisement, the Tribunal regards the time spent as excessive; however, as the Notice for

Request of Particulars was clearly drafted after the Respondent's solicitors had investigated the title (and having regard to the terms that they required to be included in any conveyance), the Tribunal considers that two hours for dealing with these initial matters to be reasonable.

26. The Tribunal notes that the Associate who carried out this initial work held a Fellowship Grade and was considered a specialist, so does not consider that any peer review of the work was warranted
27. The Tribunal does not consider, on the evidence presented, that the matter was particularly complex or time consuming but notes that the Respondent did draft the transfer. As much of the legwork for the terms to be included in the transfer appeared to have been carried out when drafting the Notices, the Tribunal does not consider that drafting the transfer should have taken more than an hour, with around a further hour for dealing with the transfer plan and any correspondence with the Respondent and the Applicant's representatives.

***Chargeable rate***

28. The Tribunal notes that, although the freehold interest did include some additional land over which rights were required to be granted, this is not particularly unusual in such matters and the Tribunal did not consider, on the evidence presented, that the matter warranted the involvement of a Grade A solicitor or a Partner.
29. The Tribunal notes that the Respondent, who lives in Hampshire, chose to instruct DMH Stallard LLP, who are located in West Sussex, as his solicitors. Based on his location, the Tribunal considers the fact that the Respondent chose to use a solicitor local to him, rather than to the Property, to be perfectly reasonable.
30. The Tribunal also considers that the hourly rate charges of both the Associate (£190) and the Chartered Legal Executive (£175) to be reasonable. As the branch of solicitors was based outside of London, the Tribunal considers the hourly rate of the Partner (£300) to be high, but as the Tribunal did not consider that the work warranted any peer review, this was of no consequence.

***Determination***

31. Taking the above into account, and with regard to the items detailed in the Costs Schedule, the Tribunal considers the following amounts to be those reasonably payable by the Applicant:

| <b>Fee - Earner</b> | <b>Rate/hour</b> | <b>Time (hours)</b> | <b>Amount</b> |
|---------------------|------------------|---------------------|---------------|
| Assistant solicitor | £190             | 2.9                 | £ 551         |
| Paralegal           | £175             | 1.2                 | £ 210         |
| <b>Total</b>        |                  | 4.1                 | <b>£ 761</b>  |

32. The Tribunal does not believe that the Respondent is registered for VAT but, if he is, he will be able to recover the VAT on those fees because those services will have been supplied to the Respondent, not the Applicant. In such circumstances VAT will not be payable by the Applicant.

***Valuer's costs***

33. The Tribunal considers that establishing the rateable value of the Property was easily ascertainable and notes that the valuer only carried out an external inspection of the Property, the time spent for which was agreed by the Applicant as thirty minutes.
34. The Tribunal considers that a reasonable amount of time for carrying out any research and calculations would be two and a half hours and is not satisfied that peer review would be required, as the Respondent had confirmed that he had experience in carrying out residential valuations for leasehold enfranchisements.
35. As such, the Tribunal considers the valuer's reasonable costs to be £600, no VAT being payable on the same.

**Appeal Provisions**

36. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham