



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : **BIR/47UF/OC6/2021/0001**

Property : **8 Yew Tree Hill, Droitwich,
Worcestershire, WR9 7QQ**

Applicant : **Lisa Valdi Porkorny**

**Applicant's
Representative** : **Midland Valuations Limited**

Respondent : **AB25 Investments Limited**

**Respondent's
Representative** : **Housing and Property Law Partnership**

Type of Application : **Application for determination of reasonable
costs under s9(4) Leasehold Reform Act
1967**

Tribunal : **Tribunal Judge PJ Ellis
Tribunal Member Mr D Satchwell FRICS**

Date of Hearing : **16 June 2021**

Date Decision issued : **2 July 2021**

DECISION

The Tribunal determines the reasonable sum payable costs payable by the Applicant to the Respondent for costs under s9(4) Leasehold Reform Act 1967 is £1102.60 inclusive of disbursements.

Introduction

1. This is an application for a Reasonable Costs Order under s21(1)(ba) Leasehold Reform Act 1967 (the 1967 Act). The Applicant is Lisa Valdi Porkorny who is represented by Mr Joe Moore of Midland Valuations Limited of Stratford Upon Avon. The Respondent is AB25 Investments Limited, represented by Mr Aashu Oberoi of Housing and Property Law Partnership Solicitors, Warwick Court, London WC1.
2. The matter started when the Applicant served a notice of her claim to acquire the freehold of 8 Yew Tree Hill, Droitwich, Worcestershire. WR9 7QQ on 19 November 2020. The notice was in standard form. On 15 January 2021, the Respondent's solicitor served a notice in reply admitting the Applicant's right to acquire the freehold. By the reply, the Respondent asserted the valuation was to be determined in accordance with s9(1A) of the Act but on that day the Respondent's solicitors had received information from Severn Trent Water Authority that the rateable value of the subject property was less than £500.00.
3. The parties came to terms on the price payable for the freehold but were unable to agree the sum payable for the Respondent's costs pursuant to section 9(4) of the Act. The Respondent's solicitors proposed a sum of £2475.00 plus VAT of £495.10 and valuers fee of £750.00 plus VAT £150 and a disbursement of £12.00 HMLR search fee. The Applicant's representative made a counter proposal of £533.40 and VAT of £106.68 plus the HMLR search fee. The respective claim and counter proposal are set out in the table appended to this Decision.

4. The matter was heard by the Tribunal by video conference. The Applicant was represented by Mr Moore. The Respondent was represented by Mr Oberoi.

The Statutory Framework

5. Section 9 of the Act provides a statutory framework for deciding the price and costs of enfranchisement. Subsection 4 describes what items of work are provided for when determining the reasonable sum payable by the Applicant for costs:

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.

6. The terms of the legislation are substantially the same as in s60 Leasehold Reform and Urban Development Act 1993 in connection with the costs of granting new leases of leasehold properties. The Tribunal has had regard to recent decisions of the Upper Tribunal when dealing with s60 applications when deciding what is a reasonable sum for costs in this case.
7. In *Sinclair Gardens v Wisbey*[2016] UKUT 203 (LC); HH Judge Huskinson said in connection with a lease extension case pursuant to s60 of the Leasehold Reform and Urban Development Act 1993
“In my judgment on the proper construction of section 60 there is a burden upon the landlord who is claiming costs for professional services (which therefore fall within section 60(2)) to prove that the costs are (and the extent to which the costs are) reasonable.
8. The standard of proof required of the landlord described in *Metropolitan Property Realisations Ltd v Moss* [2013] UKUT 0415(LC) is the “reasonable expectation test”. Mr Martin Rodger QC the Deputy President giving the decision of the Upper Tribunal that the band of costs recoverable under the reasonable expectation test has a ceiling of the costs which would have been paid by the landlord if paying them itself and is not restricted to the costs which the Tribunal considers to be reasonable.
9. This Tribunal recognises that the test of whether or not the landlord would have paid the fee as claimed by the Respondent is not contained in the 1967 Act but it respectfully agrees the description of the meaning and effect of s60 of the 1993 Act when considering the present claim. The learned judge said:
“These provisions are straightforward, and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum

payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.

On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable.

The Hearing

10. Mr Oberoi was candid with his explanation of the various items of charge. His attendance (item 1) included approximately 20 minutes perusing the notice of claim and advising on process but then included time taken considering the law associated with the 67 Act. He admitted he was unfamiliar with this legislation, as was the paralegal assigned to assist him. Further, as a London practitioner he was unfamiliar with midland based valuers. Accordingly, he instructed a London based valuer who was similarly inexperienced with 67 Act procedure. Also, the valuer was unable to ascertain the rateable value of the subject property rendering correspondence with Severn Trent necessary.
11. Mr Moore on behalf of the Applicant did not challenge the application of a London hourly rate for allowable work but suggested the rate should conform with current guidelines.
12. It was accepted that the charge for office copies of the title documents could and should have been dealt with by one request.
13. Items 14 & 15 relating to investigation of title and preparing the counter-notice were undertaken by the partner rather than a competent para-legal. The time taken was extended by reason of the want of familiarity with the 67 Act.
14. Items 16,17 & 18 all include an anticipatory element which lack of familiarity renders more difficult to predict accurately.
15. Mr Moore's submissions concentrated on the specific work provided for by s9(4) together with a complaint of over lengthy time taken on dealing with matters which he considered routine matters. He contended that whereas Mr Oberoi may be unfamiliar with 67 Act cases, the Respondent was experienced with such claims. He referred to correspondence he had with the Respondent in which, he

stated, the Respondent expressed the preference for these matters being resolved by formal proceedings in order that its costs position is protected by statute.

16. The valuer's fee was challenged as excessive.
17. Mr Oberoi contended that all the work the subject of the claim was necessary. He referred the Tribunal to a Decision of the London Tribunal (*LON/OOAC/OC62017/0002 re 100 Willifield Way London NW11 6YG*) when the Tribunal allowed a similar sum for work done under the 67 Act.

Decision

18. It is not for the Tribunal to consider whether it was appropriate for the Respondent to use London solicitors and valuer for a Midland matter. The duty of the Tribunal is to determine the reasonable costs of or incidental to any of the prescribed matters.
19. The Tribunal does not doubt that Mr Oberoi was engaged for the times claimed but that does not make the claim reasonable. The Willifield decision was made without substantial challenge by the paying party consequently the Tribunal found the Decision of little assistance.
20. The Tribunal appreciated Mr Oberoi's candour about his lack of experience. It also acknowledged Mr Moore's concession regarding guideline hourly rates.
21. The Tribunal reviewed the claim and decided the time claimed as follows:
 - a. Item 1 was excessive as it included more than allowable work.
 - b. Items 2 & 5 included non-allowable or irrelevant work relating to the valuer's inexperience of 67 Act work.
 - c. Items 3 & 4 combine in one charge
 - d. Item 6, 7 & 10 irrelevant as there was no estate management scheme in effect
 - e. Items 8 & 9 allowable at reduced rate of the paralegal
 - f. Item 11 allowed at guideline rate
 - g. Items 12 & 13 irrelevant
 - h. Item 14 provided for but time taken excessive and reduced

- i. Item 15 heavily over charged, including research into 67 Act which should not be charged to the Applicant and reduced.
 - j. Item 16 is excessive for preparation of a TR1 by experienced property lawyer
 - k. Item 17 is paralegal work. Claim not supported by evidence
 - l. Item 18 is largely guess work and reduced.
 - m. The Valuer's fee for a desk top valuation is grossly excessive and a figure of £350 substituted.
 - n. Land Registry fees are not disputed.
22. Applying the itemised decision the Tribunal has determined that it is reasonable for the Applicant to pay the Respondent the sum of £740.60 plus £350 valuer's fee and £12 disbursement. The Tribunal does not add Vat to the sums payable as the service was not rendered to the Applicant and the Respondent is registered for VAT. The breakdown appears on the table appended to this Decision.

Appeal

23. 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).

Tribunal Judge Peter Ellis

Appendix

Column1	FIRST - TIER TRIBUNAL	Column3	Column5	Column8
	Property Chamber (Residential Property)			
	BIR/47UF/OC6/2021/0001			
	8 Yew Tree Hill, Droitwich	Worcs WR9 7QQ		
	Parties	Lisa Valdi Porkorny	Applicant	
		AB25 Investmentss Ltd	Respondent	
	Claim		Applicant Offer	Tribunal Decision
	Partner Rate 325: ParaLegal. 170		P=317 P/L=170	P=317 P/L=170
	Item	Sum	Sum	Sum
	1 Considering Notice of Claim	325	31.7	158.5
	2 Engaged to Client's Surveyor	32.5	17	17
	3 Applying for Freehold Official Copies	34	17	34

4	Applying for Leasehold Official Copies	34	nil	
5	Engaged to Client's Surveyor	32.5	17	Irrelevant
6	Engaged to Whychaven re Estate Management Scheme	65		Irrelevant
7	Received from Whychaven	32.5		Irrelevant
8	Engaged to Severn Trent re Rateable Value	65	17	34
9	Received from Severn Trent	32.5	17	17
10	Received from Whychaven	32.5		Irrelevant
11	Engaged to Client	32.5		31.7
12	Engaged to Severn Trent	32.5		Irrelevant
13	Engaged to OS	32.5		Not Required
14	Investigation of title & Lease	227.5	63.4	63.4
15	Preparing and serving Counter Notice	587.5	63.4	63.4
16	Anticipated for drfating TR1 (includes amends)	325	158.5	190.2
17	Anticipated Completion Statement	227.5	34	34
18	Anticipated for completion (including funds received and check) and documents to OS and accounting to client with funds	325	97.4	97.4
	Total Fees	2475	533.4	740.6
	VAT	495.1	106.68	
	Valuers Fee	750		350

VAT	150		
Land Reg Fees	12	12	12
Total inc Disbursements			1102.6