FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BR/OAF/2019/0021**
HMCTS code (audio,video,paper)	**:**	**P:PAPERREMOTE**
Property	**:**	**30 Thorne Crescent Worsley Manchester M28 3YF**
Respondents	**:**	**1. Landmark (Bolton) Limited** **2. Kadima Properties (UK) Ltd**
Respondents Representatives	**:**	**1. Shoosmiths LLP** **2. Fisher Solicitors**
Type of Application	**:**	**Leasehold Reform Act 1967 – Section 21 (1) (ba)**
Tribunal Members	**:**	**Judge J.M. Going** **P.E.Mountain**
Date of decision	**:**	**3 March 2021**

DECISION

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Covid -19 pandemic: description of hearing:

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face to face hearing was not held because no one requested the same, it was not necessary nor practicable, and all the issues could be determined on the basis of the papers. The documents that the Tribunal was referred to were in the Application, those supplied with it, and the parties bundles, submissions and correspondence with the Tribunal Office, all of which the Tribunal noted and considered.

The Decision

The Reasonable costs payable by the Applicant under section 9(4) of the Leasehold Reform Act 1967 comprise (1) legal costs of £800 and the amount of any documented fees from the Land Registry for official copies or searches, plus VAT, payable to the First Respondent's solicitors, together with £500 plus VAT, payable to the Second Respondent's solicitors, and (2) valuation costs of £400 plus VAT.

Preliminary

1. The Application is made under Section 21(1)(ba) of the Leasehold Reform Act 1967 ("the 1967 Act") for a determination of the reasonable costs payable by the Applicant to the Respondents under section 9(4) of the 1967 Act on exercising the right to acquire the freehold interest.

The facts and background to the Application

2. The Applicant is the owner of a long leasehold interest in 30 Thorne Crescent Worsley Manchester registered at the Land Registry under Title Number MAN291050 ("the property").

3. The property is held under a Lease dated 29 March 2017 made between (1) Countryside 26 Ltd and (2) the Applicant. The lease created a term of 250 years from 1 January 2016 at an initial annual rent of £185, subject to a 10 year review increasing by reference to the retail price index.

4. The Tribunal has not inspected the property but understands it to be a four-bedroom detached house with garage on a private estate comprising approximately 80 properties. The Lease includes the usual easements for rights of way and access to and use of utilities.

5. The Applicant served a notice dated 15 May 2019 on the Respondents, exercising his right to acquire the freehold interest in the property under Part 1 of the 1967 Act. The Respondents served a notice in reply dated 1 July 2019 admitting the claim.

6. The Applicant applied to the First tier Tribunal Property Chamber (Residential Property) ("the Tribunal") on 22 July 2019 for a determination of the price payable and the provisions which ought to be contained in the conveyance of the freehold.

7. The freehold of the property, together with other land and property, is registered at the Land Registry under title number GM535473 in the name of Kadima Properties (UK) Ltd ("the Second Respondent").

8. Landmark (Bolton) Ltd ("the First Respondent") is the current registered proprietor of part of a 999 year term lease granted out of the freehold by a lease ("the Head lease") dated 4 December 1997 and registered at the Land Registry under title number MAN329289.

9. In February 2020 the parties agreed £6200 as the price payable. They also signalled that the majority of the provisions to be contained in the conveyance were agreed. At issue were certain additional clauses proposed by the Second Respondent's solicitors.

10. On 19 February 2020 the First Respondent's solicitors wrote to the Tribunal stating "We enclose draft transfer containing all agreed terms. In addition, the following additional causes are required by the freeholder but disputed by the tenant". Their letter set out 3 additional clauses required by the Second Respondent's solicitors.

11. The Applicant sent a letter to the Tribunal on the same day (copied to the First Respondent's solicitors and the Second Respondent) confirming that he did not agree the additional clauses requested by the Second Respondent's solicitors and in which he stated "the tenant's covenants should only be insofar as they benefit other land. There are also no landlord covenants that I consider would benefit any other land so do not agree the amendments. I do not see that any of the landlord covenants could affect any other land and in addition if I agreed the landlord covenants that I could not dispose of the freehold without requiring the new owner to comply with the option to purchase which is contained in the Head lease……. The reversioner's solicitor is also in agreement on these points so has suggested to the freeholder's solicitors that if they require their inclusion they should consider an application for separate representation".

12. By a letter dated 24 February 2020 the Second Respondent's solicitors confirmed that 2 of its 3 proposed additional clauses could be omitted, stating that they were "merely clarification drafting and therefore in the interest of proportionality, our client is in agreement not for these clauses to be incorporated in the transfer". They still sought the inclusion of a covenant by the Applicant to observe and perform both "the landlord and tenant

covenants" in the Head lease reasoning that this was necessary because it included an option to acquire the freehold, and that following the merger of titles the Head lease would no longer be enforceable by their client.

13. The Tribunal issued further Directions in October 2020 with a view to considering any remaining provisions not agreed, and the extent of the reasonable costs payable under section 9(4). The Directions stated that it was considered that the matter could be resolved by way of submissions of written evidence but that if any party wished to make oral representations to notify the Tribunal's office within 28 days, and with it also confirmed that this would not affect the right of any party to request a hearing at any time before the Tribunal makes its determination. The Directions also included provisions for the Respondents to submit a detailed statement of the costs claimed.

14. In November and December 2020 it was confirmed that all the parties now agreed and approved the wording of the draft transfer as drawn up and submitted by the Applicant's solicitor in February 2020. The Second Respondent's solicitors had thus withdrawn their previous requirements.

15. This left the amount of the costs, as the only matter, to be determined by the Tribunal.

The Parties Submissions

16. The First Respondent's solicitors sought legal costs of £1550 plus VAT plus further disbursements £66 to which they also added VAT (thereby totaling £1939.20) as well as separate valuation costs of £750 plus VAT (i.e. £900).

17. The Second Respondent's solicitors provided a schedule claiming legal costs of £2391 plus VAT (i.e. £2869.20).

18. Both Respondents confirmed the experience of the fee earners concerned, and a breakdown of time spent. The First Respondent's solicitors also provided details of the actions taken in respect of the relevant subparagraphs of section 9(4), but did not provide any details of its disbursements. The Second Respondent's solicitors provided scant, if any, meaningful detail of how their time had been spent, referring simply to totals of letters out, letters in, telephone calls, and preparation. Neither Respondent detailed any dates.

19. The Applicant in response disputed all three elements of the costs.

20. He noted that when he had submitted an enquiry to the First Respondent about buying the freehold he had paid a valuation fee of £50, after which the First Respondent offered (as confirmed in a letter dated 2 May 2019 included in the case papers) to sell the freehold for £12,210 plus £540 for payment of its legal costs. The valuation report prepared by Mr Horton, the Respondents' valuer stated that the premium should be £8302.79. The Applicant's own valuation put the premium at £6706. Notwithstanding this, Mr Horton, on behalf of the Respondents, had offered to settle at the lower

figure of £6200, which was thereafter agreed by the Applicant. He explained the surprising turn of events by stating "the reversioner did not want the price determined by the Tribunal as this would have been of benefit to other leaseholders". In the circumstances the Applicant argued that Mr Horton's valuation had been unnecessary and irrelevant. The Respondents later countered by stating that they were entitled to obtain valuation advice following a claim under the 1967 Act, that the discussions outside the statutory regime had been determined in-house, in line with the market as opposed to the Act and by a qualified surveyor, meaning that the figures were not comparable. They also stated that the sum claimed was reasonable.

21. The Applicant also disputed the First Respondent's solicitors' costs stating that they appeared excessive when contrasting them with the conveyancing costs of his own solicitor, a partner, which had been £950 plus VAT plus disbursements. In reply the First Respondent solicitors stated the Applicants costs were irrelevant, drawing distinctions between the tasks involved, but stating that if they were to be compared their own legal fees for dealing with the conveyance and completion were £775 plus VAT. They pointed out, as had been stated on their statement of costs, that the actual time spent on recoverable matters far exceeded the fee being sought.

22. The Applicant's reaction to the costs claimed by the Second Respondent's solicitors was that they were grossly excessive, and totally disproportionate to the value of their client's interest in the property which he computed as being worth £3, and in the rest of the estate which he valued at approximately £182. The Second Respondent's solicitors countered by saying that the value of the freehold is irrelevant, and that the work required is the same regardless of value, that the actual time spent far exceeded the costs claimed, that the Applicant had failed to address specific issues raised at the beginning of February 2020 until December 2020, and that "as a result it had been necessary to review the Applicant's documents again, analyse the suggested drafting and its impact on the Second Respondent's legal position. The Second Respondent should not be expected to bear the cost in respect of the potentially complex implications of the Applicant's transaction".

The Law

23. Section 9(4) of the 1967 Act provides that:

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.

24. A leaseholder who gives notice under the 1967 Act claiming the right to acquire the freehold of his or her house is therefore liable for the reasonable transactional legal fees and valuation fees which the landlord incurs as a result. However, Section 9(4A) of the Act makes it clear that this liability for costs does not extend to costs which the landlord incurs in connection with Tribunal proceedings.

The Tribunal's Reasons and Conclusion

25. The Tribunal began with a general review of the papers, in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).

26. None of the parties have requested an oral hearing and, having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without an oral hearing. The issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact.

27. Before turning to the assessment of the legal costs, the Tribunal reminded itself of the following considerations:-

- The costs for which the Applicant is responsible are only those reasonably incurred in or incidental to the specific matters set out in section 9(4) of the 1967 Act,
- section 9(4A) explicitly excludes costs in connection with the application to the Tribunal,
- the Tribunal must only allow costs which have been actually and reasonably incurred, and which are reasonable in amount,
- there is a contentious element to an enfranchisement claim but the work for which costs can be recovered, as set out in s.9(4), is essentially of a transactional nature for which a fixed fee would generally be negotiated between client and his solicitor,
- the work should be undertaken by fee-earners and support staff with appropriate experience,

- enfranchisement cases are a fairly specialist area of the law, and it would be reasonable for a Grade A or B fee earner to be involved in the main work and a Grade B or C fee earner to be used for any conveyancing, provided always that that the work is undertaken efficiently and expertly,
- a competent and experienced lawyer should be able to take far less time to review reports and the title documents in order to make decisions on the specific points at issue,
- if there are complex factors to the transaction then they should be explained, if the claim for costs is challenged, as in this case,
- the Government has published, on its website, guideline figures for solicitors hourly rates when carrying out a summary assessment of court costs, listed by pay band and grade for different parts of the country. The guidelines divide fee-earners into 4 bands, depending on their level of qualification and experience. Grade A refers to solicitors and legal executives with over 8 years experience, Grade B to those with over 4 years experience, C other solicitors or legal executives of equivalent experience, and D being trainees, paralegals and other fee earners.
- the First Respondent's solicitors are based in what the guidelines refer to as a National grade 1 area where the hourly charge allocated for Grade A fee earners is £217, for Grade B £192, C £162, and D £118. The Second Respondent's solicitors are outside National grade 1 area where the figures are for Grade A £201, Grade B £177, grade C £146, and Grade D £111.

28. The Tribunal's first reaction when looking at the Second Respondent's proposed legal charges mirrored that of the Applicant. Clearly a charge of £2689 is out of all proportion to the present value of their client's interest in both the property and any nearby retained properties (which of course is postponed for very nearly a full millennium) and can only, on whatever method of calculation is used, be now worth but a few pounds.

29. Nevertheless, and notwithstanding the minimal value of the asset, statute has decreed that a party whose property interest is in effect being compulsorily purchased should be entitled to have their reasonable conveyancing costs paid for.

30. As referred to above such costs in comparable circumstances are very often negotiated on a fixed fee basis between a solicitor and their own client.

31. The Tribunal noted with interest that the First Respondents when quoting fixed fees to the Applicant at the point of his first enquiry referred to its legal fees being limited to £540. The Tribunal assumes that that that figure can only have been arrived at after discussions between the First Respondent and solicitors, and possibly even those representing them now.

32. Such considerations indicate that a proposed fee of £2689 is approximately 5 times more than that which might be negotiated in the market.

33. Clearly for such a fee to be reasonable and payable, the Second Respondents would need to fully explain and justify it. The Tribunal finds that their solicitors have not done so.

34. The Second Respondent's solicitors have not fully complied with the Directions. Their costs schedule lacks detail. It is also noted that they have not confirmed (in contrast to the First Respondent's solicitors) that a fee has been agreed with their clients. 2 fee earners are referred to, and whilst their qualifications are unspecified, 1 whose experience is referred to as "litigation" has accounted for £1688.40 of the overall proposed costs figure of £2869.20. The Tribunal is clear that litigation costs, per se, are not matters which come within section 9(4).

35. The only implied justification for the Second Respondent's solicitors costs being so much more than might reasonably be expected lies in an assertion that having raised specific issues the Applicant failed to address them until December 2020, which the Tribunal finds fallacious for various reasons.

36. Firstly, it is not true. As referred to above the Applicant clearly set out his position as regards the Second Respondent's proposed amendments to the draft transfer in his letter of 19 February 2020. Secondly, the Tribunal finds that the Second Respondent's solicitors stated reasons for those amendments were unreasonable, unsustainable, and in the event not sustained.

37. The Tribunal also finds that the reasons put forward by the Second Respondent's solicitors, for amendments (which were not seen as necessary by either the Applicant's or the First Respondent's solicitors) were misconceived, and indicated a basic misunderstanding and misinterpretation of the relevant law. The relevant provisions of the Act are very clear that the qualifying tenant is entitled to acquire the freehold free of all incumbrances, other than those that are specifically provided for.

38. The Tribunal is very far from agreeing that the Applicant should somehow have to pay for the time taken by the Second Respondent's solicitors review of a misconceived position.

39. Because of all of the above and because of the lack of detail in the Second Respondents costs schedule, the Tribunal decided that its determination of the amount of its solicitors reasonable costs would be best completed after a detailed review of the First Respondent's solicitors proposed costs, which would give a better indication of the amount of time that could legitimately be expected to be indemnified by the Applicant.

40. In reviewing the First Respondent's costs schedule and applying the considerations referred to in paragraph 27 above, the Tribunal felt it necessary to: –

- discount the hourly charge out rates referred to, which were considerably in excess of the Governments guideline rates,

- reduce the time which appeared to have been spent in dealing with the Second Respondent's proposed amendments to the transfer. The Tribunal sympathises with the First Respondent's solicitors need to expend time on a matters not of their making, but this does not mean, and nor does the Tribunal find, that it would be reasonable for the Applicant to have to pay for costs which should not have been necessary.
- moderate the times allocated to various tasks which the Tribunal found to be excessive; the Tribunal noted, for example, that all the titles involved were registered, and found that an experienced solicitor, looking in the correct places, should have been able to confirm the validity of the claim very quickly. It was also noted that there were changes in personnel throughout the matter and that 3 separate solicitors were involved in what should have been a relatively straightforward transaction.

41. Having carefully considered all of the evidence before it, and using its own knowledge and experience, the Tribunal concluded that the total chargeable time involved in respect of those matters particularised in section 9(4), when conducted by experienced fee earners working efficiently, should not have exceeded 4 hours. Applying a blended composite charge out rate of £200 per hour, to reflect the nature and complexity of the work at its different stages, the Tribunal concluded that the costs be paid by the Applicant should be £800 plus VAT.

42. For the avoidance of doubt, it is confirmed that the only "disbursements" payable, in addition, by the Applicant are for any documented fees from the Land Registry for official copies or searches. The First Respondent's solicitors have not, as specified in the Tribunal's Directions, provided the details of its claimed disbursements of £66. They have however referred to adding VAT on the same, leading the Tribunal to suppose that the items in question should properly be regarded as parts of their supply of services to their client, rather than as true disbursements. In which case, and if they are in respect of matters other than obtaining office copies or search results from the Land Registry, they have already been included in, and are provided for within, the £800 figure referred to in the previous paragraph.

43. Having decided that it was reasonable to allow the First Respondent's solicitors 4 chargeable hours for the completion of their allowable work, the Tribunal returned to its review of the costs claimed by the Second Respondent's solicitors.

44. The statutory procedures, which designate the First Respondent as "the reversioner" having conduct of the claim, inevitably load more of the necessary work onto the First Respondent's solicitors than the Second Respondents or their solicitors.

45. The Tribunal concluded 2 ½ hours chargeable time of an experienced fee earner working efficiently charged at £200 per hour is all that could be

justified. The Tribunal therefore determined that the Second Respondent's solicitors' charges must be capped at £500 plus VAT.

46. In reviewing its decisions, made after its own painstaking analysis, the Tribunal was interested to revisit the comments, made at the very outset by the First Respondent in its offer letter to the Applicant. That quoted "our legal fees are £540" and went on to state "there is no requirement for you to use a solicitor as our client's solicitor will prepare all transfers for your signature, this will save you around £500-£700".

47. Turning finally to the valuation fees.

48. The Tribunal agrees with the Respondent's contention that following the Applicant's notice of claim under the 1967 Act the Respondents were entitled to obtain a formal valuation from a suitably qualified valuer, in this case Mr Horton, and that accordingly a reasonable fee for the same is payable by the Applicant.

49. The Tribunal was satisfied that Mr Horton's valuation was finalised after the notice of claim (noting that it refers on its backing sheet to the Tribunal's case reference number) notwithstanding that it referred to a valuation date of 6 December 2018, which it is assumed was a bureaucratic error.

50. The Tribunal had careful regard to the contents of the valuation report, noting in particular Mr Horton's C.V., that he is a member of the RICS, and his statement that he had previously reached over 3000 settlements under the 1993 Act and the 1967 Act. It also noted that having described how he came to an open market valuation of £303,339, he then stated in bold letters that "the house value is irrelevant for the purpose of the calculated premium as the reversion is so far away".

51. The Tribunal reminded itself that it is only the valuer's reasonable fee for the valuation that is recoverable from the Applicant, and not any separate fee for negotiating a sale.

52. The Tribunal noted that from the First Respondent's statement of costs that Mr Horton's fees were calculated on the basis of an hourly charge out rate of £250, and referred to a total time taken of 3 ½ hours. 30 minutes was apportioned to "reviewing the claim notice and confirming the correct valuation method", 1 hour to "comparable research", a further 1 hour to "Tribunal/case law research" and a final 1 hour to the drafting of the report.

53. The question is whether the amount of that fee is reasonable. The Tribunal finds that it is not. The evidence suggests that the work involved in valuing the reversionary value should have been very straightforward, being a desktop exercise, where, by Mr Horton's own admission, the present open market value of the property is irrelevant.

54. The Tribunal finds that the "time taken" to have been either overstated and/or unreasonable. The Tribunal is clear that an expert with Mr Horton's

stated experience must be expected to know the relevant methodology without the need for further research, and not to waste time researching matters which he then deems irrelevant.

55. The report itself bears the hallmarks of being produced by means of a well worn template, which may explain what the First Respondent's solicitors later referred to as the erroneous valuation date.

56. The time likely to be required to complete the exercise should, in the Tribunal's opinion have been no more than 2 hours. The Tribunal considers a fee of no more than £400 plus VAT is reasonable for that work, and that that is the amount that should be allowed.

Judge J M Going
3 March 2021

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