

Y TRIBIWNLYS EIDDO PRESWYL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0030/09/14

In the Matter of 34 Ninian Road, Roath, Cardiff, CF23 5EG

In the matter of an Application under Section 91(2) (d) of the Leasehold Reform, Housing and Urban Development Act 1993

TRIBUNAL Chairman: Richard Payne LLB M Phil
 Surveyor: Roger Baynham MRICS

APPLICANT Hafod Housing Association Limited

RESPONDENTS Freehold Portfolios GR Limited and/or Wallace Estates Limited

HEARING 21st November 2014

ORDER

The amount of reasonable costs payable by the Applicant in respect of the costs of enfranchisement relating to 34 Ninian Road, Roath, Cardiff in accordance with section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 is **£2859.16 inclusive of vat and disbursements.**

Reasons

1. Following a hearing on 14 May 2014 in case number LVT/0066/01/14 the tribunal determined that the price to be paid for the premium for the purchase of the freehold of 34 Ninian Road Cardiff was £100,562. The written decision was dated and promulgated on 9 July 2014. By an application form dated 22 September 2014 and received by the tribunal on 23 September 2014, the Applicant sought a determination of the reasonable costs payable under section 33 (1) of the 1993 Act. The applicant contended that the costs sought by the respondent of £2875 plus VAT were excessive and that a reasonable sum would be £500 plus VAT and appropriate and reasonable disbursements.
2. Directions were given to prepare the matter for hearing and both parties indicated that they were content to rely upon their written representations and did not require an oral hearing. The tribunal was in receipt of a bundle of documentation and the statement of case from the respondent's solicitors Stevensons, dated 15 October 2014, and in receipt of the applicant's representations and evidence in a bundle dated 27 October 2014 from their solicitors LG Williams and Prichard.

The Law

3. Section 33 of the Leasehold Reform, Housing and Urban development Act 1993 (“the Act”) is headed “costs of enfranchisement”. It reads as follows;

“(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5), the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely-

(a) any investigation reasonably undertaken –

(i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or

(ii) of any other question arising out of that notice;

(b) deducing, evidencing and verifying the title to any such interest;

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

(2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.” (Our emphasis).

Written submissions for the hearing

4. The Respondents’ statement of case argued that the title in respect of the property was complicated and set out the history of the property and the three flats contained within it and that the original lease dated 11th January 1960 for a term of 80 years from 29th September 1959 had been missing until being discovered shortly before the LVT hearing in May 2014. The Respondents’ solicitors set out what work had been involved, described it as specialised, and attached as an extract in support of their argument, the “Foreword” from the Sixth Edition of Hague “Leasehold Enfranchisement” dated 9th April 2014, describing the relevant law as being “strewn with mines”.
5. The Respondents’ solicitors set out, at paragraph 14 of their statement of case, a tabular schedule detailing the work done, the time taken and the costs charged. This totalled £2,374.50 with vat at 20%, of £474.90. Disbursements were office copy entries, £27, special delivery fees of £13.17 and Valuer’s fees of £900 plus vat of £180. The total of costs, disbursements and vat being claimed was £3,969.57. The Respondents’ solicitors confirmed that the work was charged on a time spent basis and that the vast majority of the work was undertaken by Andrea Louise

Haynes who is a Fellow of the Institute of Licenced Conveyancers since 2005, at an hourly rate of £185 plus vat. When Ms Haynes was absent on vacation during September and October 2014, work was undertaken by the firm's principal Mr Stevenson at the same hourly rate, notwithstanding that his usual hourly rate is £265 plus vat.

6. The Applicant's solicitor's submissions and representations disputed that there were considerable complexities and extra work because of the nature of the title and described the title as "straightforward". The Applicant also contended that it should not be responsible for costs incurred after the 1st September 2014, which was the date of the transfer of the freehold from Freehold Portfolios GR Limited to Wallace Estates Limited and that an appropriate charge out rate for Ms Haynes would be £140 per hour.
7. The Applicant's solicitors then annotated the Respondents' schedule of costs with their own suggested reasonable times and costs at the £140 per hour rate. They provided further representations commenting on the Respondent's itemised schedule and costs. They also noted that the Respondents' solicitors' client care letter dated 10th December 2012 is addressed to Simarc Property Management Limited, its clients and group companies, and pointed out that they have received no information regarding the relationship between Simarc and Freehold Portfolios GR Limited. The Applicant's solicitors also supplied copies of some of the relevant correspondence.
8. As indicated in paragraph 1 above, the application form suggested £500 plus vat was a reasonable figure for the Respondents' costs (excluding disbursements), although the Applicant's own schedule responses totalled £317.51 for solicitor's costs excluding vat and disbursements.
9. The Tribunal noted that, included with our papers, was a completion statement from Stevensons Solicitors in which there were a number of item totals that did not correspond with the Respondents' costs schedule. The costs under section 33(1) in the completion statement (excluding vat) were said to be £2875, whereas the schedule records costs excluding vat of £2374.50. Similarly, the completion statement recorded Land registry entries as being £28 and a Special delivery fee of £6.22 as opposed to the £27 and £13.17 respectively that are recorded on the schedule.
10. However the Applicant's solicitors in their submissions accepted the Respondents' Valuer's fees and did not dispute the other disbursements claimed in the Respondent's schedule.

DECISION

11. We first considered the hourly rate claimed by Ms Haynes. Whilst neither party referred to the same in their submissions, the Tribunal considered the "Guideline Hourly rates" for solicitors, which are agreed with the judiciary and are published in the Civil Court Practice, known as the Green Book, published by Butterworths, and the White Book on Civil Procedure published by Sweet and Maxwell. The latest guideline hourly rates remain those for 2010. There are four categories of fee earners, category A for solicitors with over 8 years qualified experience, category B for solicitors or Legal Executives (FILEX, or Fellows of the Institute of Legal executives) over 4 years qualified experience, category C for other solicitors or legal executives and lastly, category D for trainee solicitors, paralegals or equivalent. There are different rates for London and three different national rates to reflect the differing geographical locations of offices within

England and Wales and the differing costs of business in those locations. This is information that is widely and publicly known within the legal profession.

12. It was not necessary to seek the respective solicitors views on the hourly rates- neither party wished to be present at an oral hearing and both parties were content for us to determine the matter on the papers. We note that in *Red Kite Community Housing Limited v Ms Jennifer Robertson* [2014]UKUT 0134 (LC), Siobhan McGrath the Chamber President of the First- tier Tribunal (Property Chamber), sitting as a Judge of the Upper Tribunal (Lands Chamber) said at paragraph 20 that *“The LVT..... is an expert Tribunal. The knowledge and experience of an expert Tribunal inform its decision making. It is wholly appropriate that an expert tribunal measure the evidence and submissions before it when reaching its determinations. The fact that it is an expert tribunal that is considering a case of itself enhances that decision making.”* The Chamber President went on to say at paragraph 21, *“If the Tribunal is aware of other specific evidence which conflicts with what has been put to it by the parties, then the tribunal must tell the parties about that evidence and ask for their comments.”*
13. We do not consider that the national guidelines contained specific evidence which conflicted with what had been put to us by the parties. Indeed the guidelines contained a range of fee earners and rates which encompassed the two rates urged upon us by the parties.
14. The Respondents’ solicitors Stevensons are based in Dereham in Norfolk which is within the National 2 guidelines. The appropriate hourly rates are £201 for category A, £177 for category B, £146 for category C and £111 for category D. We considered that Ms Haynes qualification and experience would be equivalent to a category B fee earner. We noted that the Applicant’s suggested £140 per hour would place Ms Haynes at slightly less than the category C rate. We were assisted by the national hourly rate guidelines which are now some four years old, as well as by our own knowledge and experience of legal fees for different types of work and undertaken by different fee earners. We agree with the Respondents’ solicitors that leasehold enfranchisement work is specialised- it is complex and technical in many respects. We therefore determine that the hourly rate of £185 plus vat for the work undertaken by Ms Haynes is a reasonable and appropriate rate for such work and we note that her principal Mr Stevenson charged his work at the same rate which resulted in a built in discount on the costs. This further supports our conclusion. In coming to this decision we also note that the Applicants did not set out any reasons or evidence in support of their proposed £140 per hour rate, merely describing it as “appropriate” without saying why they considered this to be so for a fee earner who has been a Fellow of the Institute of Licenced Conveyancers since 2005.
15. We then considered the Respondents’ schedule of costs under paragraph 14 of their statement of case and the Applicants comments for each item in turn. We have numbered those items for ease of reference, considered the reasonable costs and dealt with each point below.
 - 1) *Considering initial notice and its validity, 31.05.2013.* One hour 30 minutes was claimed. The Applicant submitted that 30 minutes was an appropriate time for this task and we agree. The notice, although an important document, is not a lengthy one and 30 minutes is reasonable for an experienced and specialised conveyancer to scrutinise the same. At the hourly rate of £185, this will be **£92.50**.
 - 2) *Drafting Section 20(1) Act notice – writing to and serving the same upon the Applicant’s solicitor on 31st May 2013.* Fifteen minutes was agreed by the Applicant’s solicitor. At the hourly rate of £185 this will be **£46.25**.

- 3) *Drafting non-standard letter of advise (sic) to client dated 07.06.2013*. Thirty minutes was claimed for this and the Applicant's objection was a fundamental one. The Applicant contended that this should not be paid for at all by the Applicant under section 33 of the Act. We disagree. The advice to be given to a client will come under the matters listed in section 33(1)(a). As set out above, the section covers matters incidental to investigations undertaken and, "any other question arising out of that notice" (section 33(1)(a)(ii)). This is a wide, not narrow jurisdiction. The letter to the client was not available to us but we consider that 15 minutes would be sufficient to prepare a letter of advice at this stage and so allow **£46.25** for this item.
- 4) *11.06.2013 considering response of Applicants solicitors to request Deduction of title of Right to Participate*. Fifteen minutes for this was claimed. The Applicant's solicitors submitted in response to both this and the next item, number 5, (a 45 minute claim) that "the response was a short letter enclosing office copy entries of the Applicant's property and a further deed and referring to the note on the office copy entries regarding stolen lease. The title was not complicated and 20 minutes in total would be appropriate." We consider that 15 minutes is a reasonable time to spend on the issues that arise under this item and accordingly allow **£46.25**.
- 5) *13.06.2013 considering the matter of title in great detail and trying to understand the complexities ...45 minutes*. The Applicant's objection is set out above. The Respondents' solicitors referred to the fact that there was a concurrent lease of the ground floor flat on 30th October 2002 for a term expiring on the 28th September 2029 and a later deed of variation to the same dated 18th June 2013. That the lease for the entire property was for 80 years from 29th September 1959, dated 11th January 1960 and that the rent payable by Hafod Housing Association was £69.50 and was increased by a licence dated 5th August 1974. The Tribunal consider that 30 minutes is reasonable for this item, and that it was reasonable for this time to be spent. The Applicant's suggestion of 20 minutes for this and the preceding item is unrealistic. Therefore **£92.50** is allowed.
- 6) *13.06.2013 preparing detailed Letter of Instruction to Specialist Valuer- 60 minutes*. Again the Applicant submits that this should not be paid for under section 33. We consider this objection to be misplaced. Section 33(1)(d) clearly refers to reasonable costs of and incidental to "any valuation of any interest in the specified premises or other property;" and instructing a valuer clearly comes within this sub-section. The Applicant's solicitor also submits in the alternative that the time spent was unreasonable. We consider that the time taken on this task, which is of considerable importance in the process, is reasonable and accordingly allow one hour, **£185**.
- 7) *03.07.2013 receiving detailed Valuation Report from Specialist Surveyor and sending non-standard Letter of Advice to Respondent and asking for instructions – 45 minutes*. The Applicant's solicitors again contend that this should not be paid for by the Applicant under section 33. We reject this submission as this work clearly comes within section 33(1)(d). The Applicant in the alternative submits that the time was unreasonable, enquire as to the nature of a non-standard letter and suggest that 40 minutes would have been appropriate for both this and the preceding item combined. We find that the 45 minutes claimed for the consideration of the report and sending a non- standard letter following this are reasonable. We find that the Applicant's suggestion of 40

minutes for items 6 and 7 is wholly unrealistic for this specialised and technical area of the law. Accordingly we allow the 45 minutes claimed, namely **£138.75**.

- 8) *16.07.2013 drafting Counter Notice in response to initial notice and thoroughly checking the same – 45 minutes.* The Applicant suggests that the appropriate time would not exceed 20 minutes but we find that 30 minutes would be reasonable to undertake this step and accordingly allow **£92.50**.
- 9) *13.05.2014 searching through Strong Room to find copy of lease dated 11.01.1960 and issuing copies to parties- 90 minutes.* The Applicant stated that they should not pay for this item and that the tribunal decision reference LVT/0066/01/14 referred to the surveyor Mr Evans finding a copy of the lease in his archives. The Applicant further observes that a reference to the appropriate schedules or lists kept by the Respondents' solicitors should enable the document to be located quickly. We agree with the Applicant's solicitors. Paragraph 2 of the above referenced decision of the LVT clearly records that it was Mr Evans, the Respondents' surveyor, (who is based in Cardiff), who had found the original lease and had then faxed it to his instructing solicitors in Norfolk. This Tribunal panel is the same as for that enfranchisement case and we also independently recollect Mr Evans' explanation for the discovery of the original lease. The evidence previously given and accepted was not that it was located in Stevensons' strong room. **This item is therefore disallowed in its entirety.**
- 10) *21.07.2014 having read the said 11.01.1960 lease in detail – preparing draft Contract and draft transfer to include submitting the same to the [Applicant's] solicitors- 60 minutes.* The Applicant's solicitors suggest that the draft contract and transfer are in standard form and their handwritten annotations suggest that 20 minutes would be appropriate although their typed comments suggest 30 minutes. We consider that the time spent includes reading the original lease (no reference is made to doing so elsewhere) and that one hour is a reasonable time for doing this, preparing the draft contract and transfer, and accordingly we allow the time claimed at **£185**.
- 11) *21.08.2014 receiving comments of Applicants solicitors on draft contract and draft transfer and then considering responses and issuing responses on 28.08.2014 – 45 minutes.* The Applicant's solicitors suggested in their handwritten annotations on the schedule that 15 minutes was appropriate as the enquiries/comments were straightforward and numbered 8, together with the draft contract being slightly amended and the transfer and requisitions. In their typed representations on the schedule they suggested 20 minutes was reasonable. We consider that the time claimed and spent by the Respondents was reasonable. The documentation needs to be carefully considered and checked and we accordingly allow the 45 minutes claimed, namely **£138.75**.
- 12) *Receiving further letter from Applicants solicitors regarding draft contract dated 02.09.2014 and responding 02.09.14 – 15 minutes.* The Applicants attached copies of three letters to the Respondents' solicitors of the 2nd September 2014, and submitted that they do not come within section 33, and that alternatively the time claimed is unreasonable in the light of the contents of the letters. We do consider that the letters and the subject matter come within section 33. We allow 15 minutes for dealing with these matters and for responding namely **£46.25**.

- 13) *Receiving 3 letters from the [Applicants] solicitors dated 02.09.14 and responding on 04.09.14 – 20 minutes.* The Applicant's solicitors had bracketed this matter with the immediately preceding item and relied upon the same observations. In the light of our decision at 12) above, **we disallow this item**. There appears to be duplication of the claimed costs, and in any event we determine that the time allowed at 12 is sufficient to cover this matter.
- 14) Please note that our numbering now departs from that of the Applicant's solicitors as they had bracketed the two previous items together. The next item claimed is; *04.09.14 reporting in detail to the client as to the proposed Contract and proposed Transfer explaining the documents to the client and seeking their signature to the same and execution of the same.* The Applicant's solicitors state that they understood that the transfer from Freehold Portfolios to Wallace Estates is dated the 1st September 2014 and therefore when contracts were exchanged with the Applicant on the 8th September 2014 the Contract and transfer had to be in the name of Wallace Estates. Therefore, they submit that the Applicant should not be responsible for any costs after the 1st September 2014 since there could be no contract and transfer between the Applicant and Freehold Properties after 1st September 2014. They refer to paragraph 15 of the Respondent's statement of case where it states there is no claim for the Applicant to pay the extra costs arising from the transfer to Wallace Estates on the 1st September 2014. We find that a reasonable cost and time for undertaking this work is 15 minutes or **£46.25**. This is because the Respondents' solicitors would already be familiar with the file and issues on the basis of the time already spent and allowed. We reject the Applicant's solicitors assertion that none of the post 1st September costs are payable. (The Applicant's solicitors repeat these submissions for items 15- 18 below.) Section 33 refers to the reversioner or any other relevant landlord. The Respondents' solicitors indicate at paragraph 15 of their statement that they have not claimed any of the costs of the transfer of the freehold from Freehold Portfolios GR to Wallace estates. It is clear from the schedule of claimed costs that they have not done so. Such costs are distinct from the costs of the enfranchisement under section 33 which are the subject of the schedule and this determination. The identity of the freeholder has changed since the start of the enfranchisement process but that does not mean that the costs of enfranchisement under section 33 can only be claimed in respect of the first freeholder, which is what the Applicant's solicitor is arguing.
- 15) *08.09.14 Preparing for and exchanging contracts and reporting to client – 30 minutes.* The Applicant's solicitors repeat their assertion that none of the post 1st September costs should be allowed. We have already dealt with and rejected that submission. We consider that only 15 minutes is reasonable for this step in view of the time spent and already allowed and the familiarity of the fee earners with the subject matter. We allow **£46.25** for this item.
- 16) *12.09.2014 receiving 2 letters dated 08.09.2014 from the Applicants solicitors and considering the same and responding to Requisition on title and other questions asked- 30 minutes.* We note from the letter sent with the Application that there were only 8 very short questions asked in relation to these matters and consider that these were capable of being answered quickly in view of the time already spent by the Respondents'

solicitors on the matter. Accordingly we allow 20 minutes for these steps, namely **£61.66**.

17) *02.10.2014 receiving letter dated 01.10.2014 from Applicants solicitors inter alia preparing completion statement and responding to the said letter – 30 minutes.* We consider that the time claimed is reasonable for the work to be undertaken and allow **£92.50**.

18) *Estimated time in preparing for and completing and reporting to client – 1 hour.* We consider that in view of the reporting to the client already undertaken, that 30 minutes is reasonable and we allow **£92.50** for this item.

16. The Applicant's accepted the surveyor's fees of £900 plus £180 vat and did not raise any objections to the disbursements claimed of £27 for office copy entries and £13.17 for special delivery fees, namely **£1120.17**. Accordingly we determine that the Respondents' reasonable solicitors costs for dealing with the enfranchisement of 34 Ninian Road, Cardiff are **£1449.16** plus vat at 20% of **£289.83**, totals **£1738.99**. The grand total payable of costs, disbursements and vat is **£2859.16**.



Richard Payne
CHAIRMAN

DATED this 10th day of December 2014