

Y TRIBIWNLYS EIDDO PRESWYL
LEASEHOLD VALUATION TRIBUNAL (WALES)

Reference: LVT/0043/01/19

Property: 65 Heol Barri, Caerphilly, CF83 2LX

In the matter of an Application under the Leasehold Reform Act 1967, Section 9(4).

Tribunal Chairman: Trefor Lloyd

Applicant: Whitehall Place Property Limited

Respondents: Martyn Thomas Cook and Wendy Jane Cook.

ORDER

The amount of reasonable costs payable by the Respondents in respect of the cost of their Application in respect of costs relating to 65 Heol Barri, Caerphilly ("the Property") in accordance with Section 9(4) of the Leasehold Reform Act 1967 is **£1,701.00 inclusive of VAT and disbursements.**

REASONS

Background

1. By way of a Notice under Section 5 of the Leasehold Reform Act 1967 ("the Act") the Respondents on 26th April 2016 gave the Applicant Notice dated 1st October 2015 of their desire to compulsorily purchase the Applicant's freehold interest in the Property. The Applicant replied on the 28th June 2016 admitting entitlement of the Respondents to compulsory purchase its freehold interest in the Property.
2. Some discussions ensued and eventually the Applicant decided to apply to this Tribunal by way of an Application dated the 12th April 2018 pursuant to Section 21(1)(a) of the Act for determination of the price payable for its freehold interest in the premises. Despite the Respondents being copied into the Application, and also copied into subsequent directions although they had initiated the process by serving a Section 5 Notice for whatever reason, they decided not to engage with the Tribunal process.
3. The Tribunal convened a hearing, inspected the premises and heard from a Mr Gareth Evans FRICS on behalf of the Applicant. Mr Evans had undertaken a valuation of the Property. The Tribunal produced a written decision on the 18th July 2018 determining the price to be paid for the freehold as £8,010. Following that determination, solicitors for the Applicant wrote to the Respondents on the 10th September 2018 enclosing a transfer of the whole document and a Notice to Complete. That letter also suggested to the Respondents that if they had any queries, or were unsure as to the action to be taken, they should consult their solicitor. The same letter upon a without prejudice basis calculated the completion of the claim was required to take place by Friday the 12th October 2018. No response was received from the Respondents and a further letter dated the 18th October 2018 was forwarded to the Respondents enclosing this time a Condition 8(1) Notice of Election to Receive Interest, and a Condition 10 Notice of Default. This letter again suggested to the Respondents if they had any difficulty with the documentation, or the action to be taken they should consult their solicitor. The same letter in the last

paragraph also alerted the Respondents to the fact that if they failed to comply with the Condition 10 Notice of Default their entitlement to compulsorily purchase the freehold would be at an end, but the liability to pay the Applicant's costs pursuant to Section 9(4) of the Act would remain.

4. The Respondents did not reply and as a consequence the Applicant applied to this Tribunal by way of an Application dated the 14th January 2019 for the Section 9(4) costs to be assessed. The Respondents were copied into the Application. Directions were made by the procedural Chairman on the 18th January 2019 which were also sent to the Respondents. The directions indicated that the Tribunal was of the view that the matter could be determined without an oral hearing but gave the parties 14 days grace to require an oral hearing if they disagreed. In addition, the directions directed exchange of documents as follows:
 - (1) The Applicant to file and serve a Schedule of Costs claimed sufficient for summary assessment by 12 noon on the 5th February 2019. That Schedule to indicate the basis upon which claims are made, i.e. by reference to hourly rates, detail of parties involved and time spent etc, copies of the invoices in relation to the costs claimed, also copies of any other documents relied upon.
 - (2) The Respondents to file and serve a Statement of Case and any legal submission by 12 noon on Tuesday the 19th February 2019. That Statement to specify matters agreed, and not agreed with reasons, also suggest alternative costs if relevant. In the event that the Respondents were represented, details of any costs charged upon them by their solicitors, valuers or other professional advisers, together with costs copies or details of any comparative cost estimates or accounts, and copies of any other documents, report relied upon.
 - (3) Leave for the Applicant to respond to the Respondents' Statement of Case by 12 noon on Tuesday 26th February 2019.
 - (4) The Applicant to prepare Trial Bundles by 12 noon on Tuesday the 5th March 2019.
5. The Applicant provided a Schedule of Costs which the Tribunal Office received on the 5th February 2019. The Respondents did not comply at all with any of the directions. By way of a letter dated the 28th February 2019 the Applicant wrote to the Tribunal asking if it could, with a view to minimising costs be excused the requirement to prepare Trial Bundles in the light of no documentary evidence having been filed and served by the Respondents, and the fact that as far as its case was concerned it had already filed and served its evidence. The Tribunal Procedural Chairman acceded to that request.

The Law

6. Section 9(4) of the Act states as follows:

"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 provisions 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 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 there were to be borne by the purchaser would be void.

(4A) subsection (4) above does not require a person to bear the costs of another person in connection with an application to a Leasehold Valuation Tribunal".

7. The preamble to the Applicant's Schedule of Costs confirms that although there have been different solicitor's firms dealing with the matter from the outset the common denominator is the fee earner being a Mr Steve Nicholson who has dealt with the matter throughout. Mr Nicholson is a partner/consultant and a grade A fee earner of 18 years post-qualification standing whose hourly rate throughout was charged at £295 per hour.
8. The Applicant's Schedule of Costs breaks down the legal fees net of Vat as follows:

6th May 2016

Dealing with reviewing instructions, obtaining copy Land Registry Entries, checking the validity of the Section 5 Notice and making contact with the Applicant's valuer.

Time spent 1 hour - £295

10th and 12th May 2016

Time engaged in communication with the then Respondents' Solicitors.

Time spent (cumulative total) 24 minutes - £118

23rd May 2016

Communications with both the Respondents' solicitors and the valuer

Time spent -12 minutes £59

28th June 2016

Producing the Applicant's Reply to the Notice and communicating with Respondents' solicitors.

Time spent - 24 minutes - £118

30th June 2016

Communication with the Respondents' solicitors

Time Spent 12 minutes - £59.

10th September 2018

Preparing a Notice to Complete and transfer and communicating with the Respondents (by now in person) and the Applicant.

Time spent- 36 minutes - £177

18th October 2018

Preparation of Default Notice and communication with Respondents and Applicant.

Time spent 24 minutes - £118

21st December 2018

Communication with Respondents.

Time spent - 6 minutes - £29.50

Disbursements

Copy of the Register of Title and Leasehold of the premises - £12 No Vat.

9. As the Applicant is not VAT registered, VAT on legal fees (less disbursements) comes to £194.70 (and not £565.05 as erroneously set out at point 12 of the Schedule). Therefore, in total the sum claimed for legal fees is £1,168.20 plus £12 disbursements.
10. The Schedule also details the cost of a valuation by Mr Geraint Evans of Bureau Property Consultants in the sum of £500 plus £100 Vat – Total £600 thus giving a grand total claimed of £1,768.20.
11. Whilst the Respondents have not objected to any of these sums it is still the duty of the Tribunal to ensure that what is charged is the reasonable costs of or incidental to the items listed in subparagraphs (a) to (e) of Section 9(4) of the Act.

Legal Costs

12. Dealing firstly with the hourly rate charged. The Solicitor for the Applicant is based in Oxford and the property is located in Cardiff. Both locations fall within National Grade 1 category in accordance with the HM Courts and Tribunal Services document titled "Solicitors Guidance – Hourly Rates" ("the Guidance"). The guidance in relation to a Grade A fee earner in the Grade 1 category is £217 per hour placing the sum charged per hour at £78 per hour in excess of the Guidance. This Tribunal is not bound by what is simply guidance. That being the case and bearing in mind the guidance has not in any event been reviewed since April 2010 I consider a reasonable hourly rate in this context to be £275 per hour taking all matters into account.
13. Secondly dealing with the time spent and the nature of the activity. Having considered carefully the times set out in the schedule, that in total amounts to 3.3 hours between April 2016 and December 2018 I have no hesitation in finding the amount of time claimed as being reasonable and with the benefit of the breakdown of the activities undertaken that these all fall within what is prescribed in Section 9(4)(a)-(d) of the Act, and are thus recoverable.
14. Although the directions dated 18th of January 2019 required copies of invoices in relation to the costs none have been forwarded to the Tribunal. The Costs Schedule is however certified in the following terms "*The Section 9(4) fees and disbursements claimed herein do not exceed the cost which the Applicant is required to pay*". That certification is signed by the Applicant's now solicitors Knights plc. In the circumstances and based upon that certification, I am satisfied that these sums have either been paid, or fall due and owing by the Applicant to its solicitors.
15. Applying my decision as to the hourly rate allowable to the allowable time spent results in a total for legal fees (less disbursements) of £907.50 plus VAT at 20%. The VAT being £181.50 giving a total of £1,089.00. In addition I allow the disbursement of £12 for (included in section 11 of the schedule) in respect of the office copy entries thus increasing the sum to £1,101.00.

Valuation Fee

16. The sum of £500 plus Vat is claimed for Mr Geraint Evans of Bureau Property Consultants for a Section 9(1) valuation. The fee is said to relate to a period from the 28th April 2016 to 16th June 2016. In terms of the amount charged I find the fee at

£500 plus VAT reasonable for a valuation of this nature. Despite the requirement in the directions for an invoice to be produced it has not been disclosed to the Tribunal. Notwithstanding that I can be satisfied that the valuation was commissioned, as there is reference to it within the decision relating to the premium payable for freehold under reference: LVT0002/04/18 with an extract from the valuation appearing as Appendix 1 to that decision. The Tribunal members in that instance accepted Mr Evans's valuation figure. In the premises I am satisfied it is a sum properly payable as a reasonable disbursement.

17. Accordingly, I determine that the Applicant's reasonable solicitor's costs for dealing with the Application to enfranchise 65 Heol Barri, Caerphilly, CF83 2LX as commenced by the Respondents, but for whatever reason not proceeded with to be £907.50 plus VAT at 20% of £181.50 being in total **£1,089.00**, the disbursement of **£12** for the HMLR search and the the surveyors valuation fee of £500 plus VAT of £100 namely **£600** are reasonable. Accordingly, the grand total of costs disbursements and VAT is **£1,701.00**.

Dated this 29th day of March 2019



Chairman