

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0046/03/23

In the Matter of premises at 24 Paddock Street, Llanelli, SA25 2RU

In the matter of an Application under Section 21(1)(a) of the Leasehold Reform Act 1967.

Applicants: Pobl Homes and Communities Limited  
c/o Devonshires Solicitors

Respondents: Phillips (Family Properties) Limited

## Decision on costs.

**The tribunal determines that the Respondent's reasonable costs properly recoverable from the Applicant are £1975 plus VAT.**

1. This case relates to the Applicant's right to enfranchise in respect of the premises at 24 Paddock Street, Llanelli SA 25 TRU ("the property"). The tribunal was informed by email of 30th May 2023 from the Applicant's solicitors that the consideration and surveyors fees had been agreed and a form TR1 (the conveyancing document transferring the ownership of the property from one party to another) had also been agreed. The only outstanding issue related to the solicitors' fees. The tribunal gave directions on 13<sup>th</sup> of July 2023 to both parties to file submissions upon the costs payable to the Respondent.
2. The Respondent duly filed a statement of case prepared by Walter Kramer of Gisby Harrisons Solicitors in which the Respondent sought to recover its legal costs in relation to two notices served by the Applicant pursuant to section 5 of the Leasehold Reform Act 1967 ("the Act"). The first notice was dated 17 March 2016 for £900 plus VAT, and the second notice was dated 22<sup>nd</sup> of November 2022 for legal fees of £2500 plus VAT and surveyor's fees of £700 plus VAT. The latter sum was agreed and a disbursement of £12 for Land Registry search fees were also claimed in relation to the 2016 notice.
3. The Respondent noted that in addition to the section 5 notice of the Act of 17 March 2016, it also received a notice under section 13 of the Leasehold Reform Housing and Development Act 1993 on or around 6 June 2016 in relation to the property. The Respondent argues that the notice served in 2017 (this is a mistaken reference to the 2016 notice) did not lapse and the costs incurred in relation to that notice were properly incurred and not subject to provisions under the Limitation Act 1980 or otherwise. The

Respondent notes that the notices served in 2022 were served without prejudice to the 2017 notice.

4. The Applicant's response was prepared by Zoe McLean-Wells dated 26<sup>th</sup> July 2023. The Applicant submits that section 9 of the Limitation Act 1980 applies, to the first notice noting that section 9(1) states that "*an action to recover any sums recoverable by virtue of an enactment shall not be brought after the expiration of 6 years from the date on which the cause of action accrued*". The Applicant also points out that the date of the first notice was 17<sup>th</sup> of March 2016 not 2017 as referred to by the Respondent. The Applicant submits that the Respondent is statute barred from recovering legal costs in relation to the 2016 notice and that the Respondent cannot claim legal costs in relation to the notice served under section 13 of the 1993 Act which contains separate provisions on costs recovery.
5. The Applicant argues that in the alternative the legal costs in relation to the 2016 notice are not "reasonable" as required by section 9(4) of the Act as it cannot be said to be reasonable to sit on a notice for over six years and then incur legal costs in relation to the notice. The Applicant disputes the entirety of the £900 plus VAT claimed for the 2016 notice. In respect of the 2022 notices, the Applicant disputes that the costs of £2500 plus VAT are reasonable. The Applicant submits that time spent upon a number of issues was excessive and the work could have been undertaken by a lawyer below partner level.

#### **DECISION.**

6. The relevant law is set out in section 9 (4) of the Act which states 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 state 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;"*
7. Section 5 of the Act contains general provisions as to a tenant of a house having the right to acquire the freehold and giving notice of his desire to have it, and section 8 relates to the obligation to enfranchise where a tenant gives to the landlord written notice of his desire to have the freehold. Section 9 (1) refers to the price payable for a house and premises on a conveyance under section 8 above "*shall be the amount which **at the relevant time** the house and premises, if sold in the open market by a willing seller..... might be expected to realise...*" [My emphasis].  
Section 37(1)(d) says "*“relevant time” means, in relation to a person's claim to acquire the freehold or an extended lease under this Part of this Act, the time when he gives notice in accordance with this Act of his desire to have it;*"

8. The tribunal was not told the price that had been agreed between the parties for the enfranchisement or the valuation date relied upon. However, since that valuation would relate to the relevant time, namely the date of the notice, there is likely to be a difference in valuation between a date in March 2016 and a date in November 2022. The tribunal finds that it is likely, upon the limited evidence before it and the balance of probabilities, that the valuation agreed, and the surveyor's fees agreed, relate to a valuation pursuant to the notice served in November 2022. There cannot have been two separate valuation dates or relevant times, and costs would only be payable for the relevant time and valuation date in the notice relied upon. In any event, the tribunal agrees with the Applicant's submissions that any claim for costs in relation to the notice from March 2016 are statute barred. It is clear that the notice was dated 17 March 2016 as a copy of it is appended to Mr Kramer's statement. Whilst Mr Kramer asserts that the notice of March 2016 is not subject to the provisions of the Limitation Act 1980, he offers no argument at all in support of that assertion.
  
9. With regard to the costs claimed, the tribunal finds that the costs are not reasonable. For example 54 minutes to determine the rateable value in corresponding and attending on Welsh Water, 48 minutes on reviewing the basis of valuation to determine the premium payable to the Respondent, discussing the valuer's advice with the Respondent as well as considering that at item J on the Respondent's Schedule of costs, indicate that more time has been spent upon this matter than the tribunal considers reasonable. There is nothing in the papers or arguments before the tribunal to suggest there were any particularly difficult legal issues that required further time or the involvement of a partner throughout and **the tribunal accordingly determines that the reasonable solicitors' costs properly recoverable from the Applicant are £1975 plus VAT.** For the avoidance of doubt the £12 Land Registry search fee was incurred in relation to the notice of 17<sup>th</sup> March 2016 and is statute barred and not recoverable.

Dated this 24<sup>th</sup> day of October 2023

Tribunal Judge R. Payne.