

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : **Silvermere Court,
Harestone Valley Road,
Caterham,
Surrey CR3 6HF**

Applicants : **Silvermere Court Caterham Ltd.**

Respondent : **W.R. Newland & Sons Ltd.**

Case number : **CAM/43UK/OCE/2007/0011**

Type of Application : **To determine the costs payable on
enfranchisement (Section 33 of the
Leasehold Reform and Urban
Development Act 1993 ("the 1993 Act"))**

Date of Application : **16th May 2007**

Tribunal : **Bruce Edgington (Lawyer chair)
Richard Marshall FRICS FAAV
Sarah Redmond BSc ECON MRICS**

DECISION

1. The reasonable valuation fees of the Respondent in dealing with the matters set out in Section 33 of the 1993 Act are £1,500 plus VAT to include disbursements.

Reasons

Introduction

2. The Applicant is the nominee purchaser of the property which applied to the Respondent for the enfranchisement of the property pursuant to Section 24 of the 1993 Act.
3. Agreement has been reached on all matters save for the valuation fees to be paid by the Applicants pursuant to Section 33 of the 1993 Act.
4. The parties agreed to this matter being dealt with by way of paper determination i.e. without an oral hearing. A Directions Order was made notifying the parties that there should be mutual exchange of representations on or before 28th August 2007 and that the costs would not be assessed before then. In the meantime, no request was made for a hearing.

5. Only the Applicant sent written representations to the Tribunal but these helpfully set out the justification for the fees put by the Respondent. Unfortunately, a copy of the valuer's invoice was not submitted by either party which was not particularly helpful.

The Law

6. When nominee purchasers use the enfranchisement provisions, they become liable to pay the landlord's "*reasonable costs of and incidental to any of the following matters, namely-*

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

(Section 33(1) of the 1993 Act)

7. The method of assessment is on the basis that the fees to be allowed by the Tribunal are those which would be payable by the client "*if the circumstances had been such that he was personally liable for all such costs*".

(Section 33(2) of the 1993 Act)

8. Section 33(5) of the 1993 Act also says that "*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*"

The Respondent's claim

9. By letter dated 8th May 2007, the Respondent's solicitors claimed valuation fees on behalf of Messrs. Avery Associates in the sum of £4,406.25 including VAT. By a further letter dated 2nd July the same solicitors say that the fee is made up as to £420 for the first two flats and £220 for subsequent flats.

10. There is then a schedule which appears to be prepared by Avery Associates which sets out schedule of the hours spent by them including:-

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
18.01.07	receiving instructions, copy notice, considering implications and obtaining Land Registry documents	4
01.02.07	making arrangements to view	1½
16.02.07	viewing and beginning market research to include travelling	6
21.02.07	viewing 2 flats which could not be seen on 16 th , continuing research and travel	5

23.02.07	studying lease and starting calculations	4½
26.02.07	completing valuation	5

This is then said to total (as it does) 26 hours at an hourly rate of £135 making a fee of "£3,510 plus information and Land Registry Charges"

11. The Applicant then submitted a letter dated 29th June 2007 from the Applicant's valuers South East Surveys stating that their initial valuation fee was £1,400 and that they did not consider that the Respondent's valuation fee should have been any greater than that. Furthermore, they say that they acted for the freeholder of the next door but one property which had identical considerations and charged £1,200 plus VAT. They do not say when this was or how their fee was broken down.
12. As has been said, the valuer's invoice is not submitted and it is therefore impossible to see the address where he practices. In his statement to the Tribunal, the Applicant's solicitor states that he practices from a London address.
13. The Applicants criticise every part of the hours charged by the Respondent's valuer and suggest, in their objections, that the appropriate fee should be £1,400 plus VAT. In their statement they say that they would accept £1,500 plus VAT.

The Replies

14. As the Respondent did not file any representations as such, it is impossible for the Tribunal to assess any response to the criticisms raised. However, the Tribunal assumes that the Respondent would not agree to the objections raised and this is how the assessment has been approached.

Conclusions

15. The Applicant accepts the charging rate of £135 per hour and the Tribunal agrees that this is a reasonable rate.
16. The Applicant questions to need to instruct a London valuer. The Tribunal is aware that there are valuers specialising in enfranchisement who are closer to the subject property. However, without knowing what travelling time is actually being claimed, it is impossible to come to a view about how long it took the valuer to get to the subject property.
17. The Tribunal concludes that the 4 hours spent receiving instructions, studying the Initial Notice and obtaining Land Registry details is excessive. The Initial Notice is straightforward and the solicitors should have advised if there was anything in the leases or freehold title affecting value.

18. 1½ hours spent making appointments to view is excessive and the Tribunal agreed with the Applicant that this is really administration and did not justify the time of a surveyor.
19. Spending over 20 hours viewing the property, assessing the market and preparing a valuation is, in the Tribunal's view excessive.
20. The Applicant concedes a time of slightly over 11 hours in total i.e. £1,500 plus VAT. The other disadvantage in not seeing the valuer's invoice is that the Tribunal could not examine the disbursements. The 'case cost report' refers to 'Information and Land Registry charges' but does not give a figure. Doing the best it can from the limited information available to it, the Tribunal therefore has to make assumptions. It assumes that the disbursements amount to Land Registry fees which would be modest and should have been part of the legal fees in any event and travel expenses. If the Respondent had used a local valuer, travelling would also be modest.
21. Therefore, the Tribunal, using its knowledge and experience, considers that 11 hours is probably too much. However it assesses a reasonable fee for the valuation at £1,500 plus VAT but to include disbursements.



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Bruce Edgington
14th September 2007