

**LEASEHOLD VALUATION TRIBUNAL**  
**LON/00AE/OAF/2008/0060**

**LEASEHOLD REFORM ACT 1967 (as amended)**  
**SECTION 21**

**Premises:** 64 and 64a Cedar Road London NW2 6SP

**Applicant:** Mr M. Davies (Reversioner)

**Respondent:** London Borough of Brent (Leaseholder)

**Appearances:**

For the Applicant: Mr D.Fleming, Partner, William Heath & Co Solicitors

For the Respondent: Mr J. Hannington, Solicitor; London Borough of Brent  
Mr T. W. Firrell FRICS MEWI MAE, Consultant to Respondent  
Ms D. Patel, Surveyor; London Borough of Brent

**Tribunal:**

Mr L.W.G. Robson LLB(Hons) MCI Arb (Chairman)  
Ms M. Krisko BSc (Est Man) BA FRICS

**Hearing Date: 24th February 2009**

**DECISION AND REASONS**

**BACKGROUND**

1. A previous Tribunal made a decision in this case after a hearing on 11<sup>th</sup> & 12<sup>th</sup> November 2008, relating to all valuation matters relating to this property, but the question of the Reversioner's costs was left in abeyance while the parties attempted to agree them. The parties were unable to agree those costs and Directions were given for an oral hearing to be heard on 24<sup>th</sup> February 2009.
2. The parties presented an agreed bundle of documents and made written submissions prior to the hearing, with further oral submissions at the hearing. The costs of both the solicitors and the valuer were in dispute.
3. Mr Fleming on behalf of the Applicant Reversioner submitted that the solicitors' fees were based on a charging rate of £200 per hour for a partner, and £130 per hour for an assistant solicitor, comprising 4.75 hours for work spent investigating the claimant's right to enfranchise, and a further 4.5 hours for the conveyancing work. The Applicant had requested Counsel's advice as claims under the 1967 Act were now quite rare, and particularly relating to four matters; whether defects in the Notice of Claim invalidated the notice,

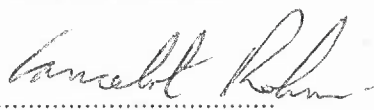
whether the Respondent could serve a further notice after the expiry of the lease (due only a few weeks after service of the notice), whether the property was a "house" within the terms of the Act, and whether the tenancy was in fact a business tenancy within the Landlord & Tenant Act 1954. Counsel's fee was £1,250. The solicitors' fee was £1,756.66. The price payable under the Act was £260,000, while the open market freehold value of the property was £600,000, thus the matter was of extreme importance to the client. Any doubts as to the payability should be resolved in favour of the Applicant. The costs should be paid on an indemnity basis.

4. He submitted that the valuer's fee had been agreed by the Applicant. The valuer was a leading expert in a relatively rare field, with a limited pool of surveyors undertaking that kind of work. The valuer confirmed by letter that his firm normally charged a fixed fee of £8,000 for this kind of work, £4,000 for the valuation, and £4,000 for other matters. In this case he agreed to reduce the fee to £6,000, with £3,000 allocated for the valuation. Time spent was not relevant to a fixed fee. If it was reasonable to instruct Mr King, his client should not be out of pocket for doing so. He agreed that the first valuation had been on the wrong basis, but this was due to lack of information on Rateable Values from the Respondent.
5. Mr Hannington on behalf of the Respondent referred to Section 9(4) of the 1967 Act and submitted that any doubt should be resolved in favour of the Respondent as the paying party. Much of the legal fees were incurred relating to how the Respondent exercised the right to enfranchise, and the Applicant's tactical options, rather than investigation of the Respondent's right to enfranchise, as set out in Section 9(4). Also those costs properly incurred under Section (4) were either unreasonably incurred, or unreasonable in amount. The Respondent agreed the hourly charging rates, but disagreed with the level of fee earner at which (unspecified) parts of the work were done. Contrary to Mr Fleming's submission he submitted that no unusual or complex issues had arisen in this case. For the same reason, Counsel's fee should be disallowed entirely. The Respondent offered £686.68.
6. Mr Firrell submitted that it was wrong in principle for the Respondent to pay the valuer's fee on the basis that it had been agreed as a fixed fee at £3,000. The question was not whether the fee was reasonable as between the Applicant and his valuer, but what sum it was reasonable for the Applicant to recover from the Respondent for the work done. The starting point should be the time spent on the work actually done. It was inappropriate to start with the agreed fee and work down. Even at face value, the work done by the valuer only amounted to £2,575 plus VAT for 14.7 hours, as evidenced by the work sheet (page 11 of the hearing bundle). Some of that work had been wasted as initially the valuation had been produced on the wrong basis. Any experienced valuer would have known how to check the Rateable Values. The Respondent offered £900. Mr Firrell considered that he was well experienced in this type of work, and pointed to his own charging rate. He had charged his client £700 plus VAT for 3.5 hours, being his actual time spent on the matter.

## DECISION

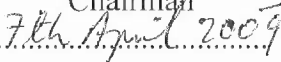
7. The Tribunal considered the evidence and submissions. We decided that Section 9(4) imposed an overriding requirement of reasonableness on the costs. The relevant parts of the Section are set out in the Appendix to this decision.
8. Relating to the legal fees, we decided that there were two unusual issues in this case; the validity of the notice under the 1967 Act, and whether the property was "a house". The other issues were not complex, or relevant. We were not provided with a copy of Counsel's opinion. The Tribunal decided that the amount payable in respect of Counsel's opinion should be reduced to £625 plus VAT to reflect advice given on the issues of substance. The Tribunal accepted the total number of hours spent by the solicitors, and the relative charging rates, but disagreed with the time spent at partner level, which we understood to be at the client's instigation. The Tribunal decided that all the conveyancing work, totalling 4.5 hours could have been done at assistant solicitor level. The investigation work would appropriately be done with 2.5 hours spent at Partner level, and 2.25 hours spent by an assistant. We thus decided that a reasonable amount for the solicitors' element was £1,377.50 plus VAT and Land Registry fees. Using our knowledge and experience, this figure was more than we would usually expect to be agreed for work on a similar property, but not excessively so.
9. Relating to the valuer's fee, the Tribunal decided that while the Applicant was entitled to instruct whom he liked, when a third party was paying the bill, he should be expected to act as a prudent man of business would in dealing with his own affairs. We were informed that he had no previous connection with the valuer's firm. The property was a very standard Victorian terraced house in a modest part of London with many open market comparables. The principles of the valuation have been established for more than 20 years, and contained no unusual features. Mr King's firm was very well known, and clearly was able to charge a premium for his services. However there was first hand evidence in the person of Mr Firrell that other equally competent surveyors would charge considerably less. This accorded with the Tribunal's own knowledge and experience of such valuations. The Tribunal decided that £900 plus VAT was a reasonable charge for the valuer's fee.
10. The parties will note that VAT should be charged at the rate ruling at the dates of relevant invoices.

Signed .....



Chairman

Dated .....



## APPENDIX

## LEASEHOLD REFORM ACT 1967

## Section 9

(4) 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;

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