3046

First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	:	**CAM/00KF/OCE/2014/0016**
Property	:	**22 Palmerston Road, Westcliff-on-Sea, Essex SS0 7TB**
Applicant	:	**22 Palmerston Road Freehold Ltd.**
Represented by		**Robert Plant, solicitor**
Respondents	:	**Alan David Pearlman, David Hager and Melvyn Mendel Hager**
Represented by		**Jonathan Upton of counsel (JPC Law)**
Date of Application	:	**29th October 2014**
Type of Application	:	**To determine the terms of acquisition and costs of the enfranchisement of the property**
Tribunal	:	**Bruce Edgington (lawyer chair)** **Stephen Moll FRICS** **Gerard Smith MRICS FAAV**
Date and place of hearing	:	**26th February and 8th May 2015 at The Court House,80 Victoria Avenue, Southend-on-Sea, Essex SS2 6EU**

ORDER

UPON the Tribunal being told that the form of transfer TR1 had been agreed between the parties as had the purchase price in the sum of £11,220.00 to include everything save for development value.

IT IS DETERMINED as follows:

1. The total purchase price of the property to include the agreed amount is £21.500.00 calculated in accordance with the First Schedule attached to this decision.

2. The disputes about individual items of costs payable to the Respondents pursuant to section 33 of the **Leasehold Reform, Housing and Urban**

Development Act 1993 ("the 1993 Act") are set out in the Second Schedule and the amount which is determined to reasonable and payable for legal costs is £742.00 plus VAT and disbursements of £6. The dispute over the time spent by the valuer is set out below and the parties will be able to re-calculate the valuer's fee.

3. The Respondents must pay to the Applicant's solicitors the sum of £1,189.08 including VAT towards their costs pursuant to rule 13 of the **Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013** ("the rules") on or before 19th June 2015.

Reasons

Introduction

4. This application is for the Tribunal to determine (a) the terms (including the price) of the collective enfranchisement of the freehold of the property (b) the amount of legal costs payable by the Applicant to the Respondents pursuant to section 33 of the 1993 Act and (c) the valuation fees payable pursuant to the same section of the 1993 Act.

5. This followed the service of an Initial Notice dated 16th June 2014 and a Counter-Notice by the Respondents dated 12th August 2014.

6. On the 5th November 2014, the Tribunal issued a directions order timetabling the case to a final hearing. This ordered the Applicant to file and serve any objections to the costs and valuation fee claimed, a draft deed of transfer, a valuer's report and any other document or statement relied upon. It also made the usual order for the expert witnesses to discuss any differences and prepare a joint statement for the Tribunal. Finally, it ordered that a bundle of documents for the hearing must be agreed by the Respondent to be filed at least 10 days before the Tribunal hearing.

7. The hearing was fixed for the 26th February 2015 but the evidence was not complete and a contested application to adjourn by the Respondents was successful. An Order with reasons was issued and sent by e-mail to the parties' solicitors within 24 hours as it contained a timetable for the filing of evidence. It is important to note that the Tribunal went through that timetable with the parties at that hearing and no objection was raised about what was being ordered. Indeed, the Respondents seemed pleased with the guidance given by the Tribunal. Having said that, the Respondents failed to comply.

8. The final hearing date was fixed by the Tribunal in an effort to progress matters but evidence by way of further experts' reports were filed and served by the Respondents just a few days beforehand. The Applicant did not in fact apply for an adjournment and the hearing therefore proceeded. The only issues for the Tribunal at that hearing were (a) the development value (if any) of the roof void (b) the legal and valuation costs and (c) an application by the Applicant for an order that the Respondents pay their wasted costs for the hearing on the 26th February.

9. The development which the Respondents considered would be possible and profitable was, according to the plan at page 71 in the bundle, a studio flat at

the front and a 1 bedroom flat at the rear of a new second floor. This would involve raising the roof at the rear and creating a new steel stairway against the boundary between this property and the adjoining property in order to reach the new 3rd storey.

The Inspection

10. The members of the Tribunal had inspected the property on the 26th February and a full description is contained in the Order dated 26th February. However, it may help to just repeat the comments made. The inspection was conducted in the presence of a lady whom the Tribunal assumed was a member of the Applicant company together with counsel for the Respondent and his instructing solicitor. It was a dry but overcast morning. The location is in a central position in Westcliff within walking distance of Westcliff and Southend town centres and a railway station with commuter trains into central London.

11. The property was brick built in the early part of the 20th century with what appear to be 2 extensions at the rear. It has a concrete interlocking tiled pitched roof. Of relevance to the issues in the case, the road is of mixed residential development with the majority of properties being semi-detached with 3 storeys in terms of their original construction rather than developments into the roofs.

12. There are 3 sets of 2 storey semi-detached houses adjoining each other, one of which is the subject property. The large 1st floor front windows are surrounded by a large protruding wood framed construction leading up to a gable end.

13. The 2 surveyor members of the Tribunal were able to gain access to the roof voids over both the 1st floor front flat and the 1st floor rear flat. There is a very large chimney stack which would have to be removed to make any type of development viable. The void to the front would appear to have sufficient height to allow residential use. However the pitched roof behind this with its ridge running towards the rear of the property would not allow this as it is because the height is insufficient.

The Law

14. The price to be paid on collective enfranchisement is calculated in accordance with the provisions of Schedule 6 of the 1993 Act. As far as development potential is concerned, the basic premise is that when there is a collective enfranchisement by long lessees, the terms of the leases of the participating lessees can be renewed on favourable terms to them and the door is also open for any potential development value to be realised.

15. Put another way, the Respondent landlords say in this case that a speculator would be interested in developing the roof void and any potential profit must be taken into account. Otherwise, there would be a windfall profit for the Applicant which would not be reasonable. It is a well established valuation principle which both parties accept and is supported by case law. The difference between the parties is that the Applicant says that there is only a potential development value of £1,000 as the roof void could be used for storage. The Respondents say that the roof void could be developed into 2 flats.

16. It is accepted by the parties that an Initial Notice was served and therefore Section 33 of the 1993 Act is engaged. The Applicant therefore has to pay the Respondents' reasonable costs of and incidental to:-

> *(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 the 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;*
>
> *(Section 33(1) of the 1993 Act)*

17. What is sometimes known as the 'indemnity principle' applies i.e. the Respondents are not able to recover any more than they would have to pay their own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 33(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

18. Finally, of relevance, rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** provides that a Tribunal may make an order in respect of costs "*if a person has acted unreasonably in bringing, defending or conducting proceedings in....a residential property case*" such as this one.

The Hearing

19. At the commencement of the adjourned hearing, the Applicant's advocate, Mr. Robert Plant was asked by the Tribunal chair whether he was seeking an adjournment because the substantial evidence filed a few days beforehand, purported to fill the gaps identified by the Tribunal at the earlier hearing and was new. In other words did his client want to seek its own expert advice as to whether such new evidence should be specifically opposed. The answer was that Mr. Plant said that he had been instructed to proceed with the final hearing and did not want an adjournment. He was told that if he did want an adjournment, he would be 'pushing at an open door' so far as the Tribunal was concerned.

20. Thereafter, it was agreed that the Respondents would present their evidence as to development value. They called 4 witnesses.

21. Simon Brook MSc MRICS had prepared the original valuation report which he presented and confirmed was accurate. He then presented a further report dated 30th April 2015 and again confirmed that it was accurate. It proposed a development value of £47,653 and contained a calculation of this using figures from the quantity surveyor's report which was subsequently

presented. He did not accept a suggestion from a Tribunal member that the correct profit element should be 20% and not 15%. He said that he had deducted £15,000 from the values of the new top flats in view of the fact that entry would be via a large exposed staircase rather than a front door. He did not think that a lack of off street parking would affect value.

22. The next witness was Daniel Fordham BEng CEng MIStructE who, as his qualifications suggest, is a structural engineer. He presented his report dated 29th April 2015. His report attached drawings which, he said, were measured and accurate. He was asked, if that was the case, why they did not show the large gable end at the front or the bay window at the side. These were relevant omissions, particularly the bay window in view of the requirements of the Building Regulations 2010.

23. In essence those regulations make it clear that with external stairs, there is a zone of 1.8 metres around them. Any opening within that zone must have fire precautions to include special windows etc. to make sure that in the event of fire, the chances of such fire engulfing the stairs is reduced. These are expensive. The problem with the proposed development is that the new open stairs leading up to the second floor are up against the boundary of the neighbouring house and it appeared from the photographs that the house itself was quite close to the boundary. Thus, if there were windows etc. within 1.8 metres of the stairs they would need renewing. This could have the same effect as a 'ransom' strip i.e. the neighbour might simply refuse to allow this.

24. Mr. Fordham was therefore asked whether he had considered the point and whether measurements had been taken. He said not. This was worrying, particularly as the omission of the bay windows on the side of the building directly affected the 1.8 metre zone because the gap between the subject property and the stairs could well then be less than 1.8 metres. Finally, the existing wooden stairs to the 1st floor could well need replacing and the cost of this had not been factored in.

25. He was also asked whether he had taken into account the bad subsidence history of the property. He replied that he had taken into account the fact that there had been no subsidence problem for a long time which enabled him to say that it was not an issue.

26. Sanjay Backory, a quantity surveyor graduated from Anglia Polytechnic University, then presented a short report and some calculations as to what he thought the cost of the development in the roof of 2 flats would be. He had come to a total of £95,520. When asked, he said that he had not provided any allowance for kitchens and these could be anything from £2,000 each to £10,000 each to supply and fit which would mean an increase on his figures of £4,000 or £20,000 depending on the choice.

27. He said that he had also not provided any contingency figure. He confirmed that, in his view, there would be sufficient storage and access on site for materials etc. when the work was progressing. The staircase would be lightweight steel off 2 pads and the wall. He had not considered building regulations but confirmed that the cost of a fire resistant window within the 1.8 metre zone would be about £1,500 each.

28. Finally, from the Respondents' side, was the planning consultant, Mr. Eli Pick BSc (Est Man) (Hons) BTP MRTPI who presented his report dated 27th April 2015. He said that the new staircase would be largely hidden by foliage which meant that it would have little impact on the street scene. This was odd in the sense that there was no foliage there. He said that, if pushed, he would say that there was an 80/85% chance of planning permission being successful.

29. He then added that in a street where there had been other loft conversions, the chances of success would be high whereas the same could not be said in a street with no other loft conversions. He was questioned about this by the Tribunal because it was reasonably clear from the inspection and the photographs available that on this side of Palmerston Road, all the houses visible in the photographs had been built as 3 storey properties, save for this set of 2 storey semi detached houses and the similar adjoining set. There was no obvious evidence of any loft conversion.

30. It was also put to him that if the staircase was on the boundary of the adjoining property, it was highly likely that the owners would object to a large, unenclosed staircase being built on the boundary which went up to a 3rd floor and would overlook their garden and their rear and side windows. His response was to say that as these new flats would be likely to be bought by single people or couples, the use of the staircase would be much less than if there were children living there.

31. Finally, he was asked by the Tribunal whether he had considered any other proposed development such as the creation of a duplex flat or maisonette out of the existing front 1st floor flat which would involve less work to the roof and no staircase. He said that he had not but gave no reason why.

32. Mr. Plant then called Terence Hair MRICS who produced his report dated 19th November 2014. He said that the staircase meant that it would be unlikely that planning permission would be granted in a conservation area. He added that he thought that the profit element in the figures would be more like 20% rather than the 15% quoted. Indeed, he said that as this sort of conversion was infrequent in the Southend area, he thought that developers would be very wary about getting involved unless the profit element was high. Mr. Upton, on behalf of the Respondents, then objected to Mr. Hair giving evidence of which he had no prior knowledge.

Discussion

33. The Tribunal was concerned about the obvious inaccuracies in the plans produced and the lack of attention given to something so obvious as building regulation problems. None of the experts called by the Respondents were local to Southend-on-Sea and seemed to have little local knowledge. The Tribunal had ordered a feasibility study to be produced and had suggested, at paragraph 21 of its February decision, that local experts may be more helpful. First-hand knowledge of how a local planning authority and conservation officer would approach this sort of development would have been helpful.

34. It felt that Mr. Pick was 'playing down' the risks in the planning process and had not really taken full account of (a) the impact of the large staircase which would clearly be seen from the road, (b) the impact on the street view of a substantial development of only one half of a pair of semi-detached houses where there was a similar undeveloped pair next door, (c) the impact of building regulations, (d) the fact that a complaint from the property next door which would be overlooked by such a large, new structure, is likely to be taken seriously and (e) his assertion that there would be such a high chance of success with planning permission when his own evidence was that in a row of houses with no loft conversions , the chance of success would be lower.

35. The Tribunal's view is that the risk of a planning application failing would be high. Probably as much as 50% in this conservation area on a side of Palmerston Road which had houses of traditional, well established designs.

36. It was also concerned that several important costs such as the installation of kitchens, expensive windows to comply with building regulations and the failure to provide for a contingency, had been simply omitted from the figures. It was also considered that the profit element should be 20% because that, in the Tribunal's knowledge and experience, would be what a bank would want to fund such a project. This knowledge and experience had been put to Mr. Brook in the hearing but he said that he did not undertake bank valuations and 15% was what he normally used.

37. For all of these reasons, the Tribunal adopts the figures set out in the calculation in the schedule to reach a figure of £10,333.92 plus the agreed figure, as rounded down slightly. It will be noted that the Tribunal accepted Mr. Brook's valuation of the flats in the roof at £110,000 each as the advantage of the sea views from the front studio flat would be balanced out by the fact that the rear flat has a bedroom.

38. The Tribunal would have been interested to see whether any alternative form of development as was suggested to the planning consultant would have been more cost effective, particularly as the Respondents had been ordered to consider this, but can only assume that the Respondents had discounted that as an option.

Rule 13 Costs

39. Mr. Plant had given prior notice of his request for an order pursuant to rule 13 that his costs of attendance at the hearing on the 26th February 2015 should be paid by the Respondents. Mr. Upton objected strongly to this. He objected in principle to any such order for costs. He did not mention quantum. The figure requested by Mr. Plant, a partner in a local firm of solicitors, was £1,189.08 including VAT.

40. The claim was put forward on the basis that the Respondents, through their solicitors, had acted unreasonably in delaying the obtaining of evidence which meant that they were forced to pursue an application to adjourn. Mr. Upton objected on the basis that it was the Applicant which had opposed the obtaining of further evidence and the adjournment; it had lost and should therefore pay its own costs.

41. The facts were that the Initial Notice was served in June 2014 offering £8,400 for the freehold plus £100. The counter-notice was served in August 2014 claiming £88,000 and £500 respectively. It was absolutely clear that the Respondents were claiming a substantial sum for development value. The figure claimed was far higher than was being claimed at the hearing. Mr. Upton, quite properly, puts forward authority for the view that a freeholder can claim what he wants. That is absolutely correct but it rather misses the point. The Tribunal is here considering 'reasonableness' and the way in which the Respondents conducted themselves in putting forward a claim which they could not, at that stage, justify, is relevant to that issue.

42. In October 2014, it was clear that there was no room for manoeuvre. The Applicant refused to pay anything other than a nominal amount for development and the Respondents wanted a substantial amount. This application was issued, at which point the Respondents must surely have been considering the evidence needed to support their assertion. The evidence they had from Mr. Brook at that time was weak, to say the least. That is not to say that Mr. Brook is not extremely able but his experience is far from local, had not really considered the planning position in any detail and had not provided any detailed costings of the proposed development.

43. In early November the Tribunal gave directions including the serving of valuers' reports on each side. That was complied with. It must have been perfectly obvious to the Respondents at that stage that their evidence did not support their position. 2 weeks after the exchange of reports, on the 3rd December 2014, the Respondents' solicitors wrote to the Tribunal asking for permission for both parties to instruct a planning expert and a structural engineer. This was said without the Applicant's prior knowledge and no intimation of what those experts would say was given. Furthermore, no experts appeared to have been identified which meant that no-one could be sure when they would be able to report and what their availability was for a hearing.

44. The Tribunal chair responded immediately i.e. on the same day, saying, in effect, that the reports should be obtained and the application to rely on them should then be renewed. It was pointed out to the solicitors that a party did not need permission to instruct an expert in these proceedings.

45. This appears to have been a crucial exchange. Mr. Upton gave the analogy of someone claiming that a signature had been forged and asking for permission to use a handwriting expert. As he said, such permission was likely to be given without sight of a report. However, this was not a similar situation. The Tribunal has a duty to be proportionate. Wanting 3 experts to substantiate a case for development value which did not include anyone who could provide the one thing which was absolutely critical i.e. the cost of works and value of the property thereafter, needed to be checked before permission was given.

46. With respect to Mr. Upton, this is much more like a civil matter such as personal injury case or a family case where a party would approach the court seeking permission to rely on a further expert's report after providing the basic orthopaedic surgeon's report or psychologist's report. The court would want to know exactly what issue the new expert was going to address

and how he or she was likely to be able to help in the decision making process. It would usually want a CV and, importantly, that particular expert's availability to provide a report within an appropriate timescale so as not delay any hearing.

47. It was not as if the Respondents were being asked to do something they did not intend to do i.e. to obtain reports from experts who could substantiate their case. The Tribunal simply wanted to see what the experts were going to give evidence about before granting permission to rely upon such evidence. In a subsequent letter dated 5th February 2015, the solicitors said that the reports had not been obtained "*because we believed that we would be criticised for instructing experts without the Tribunal's permission...*". They do not say why they had come to that view. Save in specific cases such as public law Children Act cases, no court or Tribunal can stop a party instructing an expert. The only decision for the court or Tribunal to make is whether that party can rely on a certain expert i.e. whether that particular expert is going to help or hinder the court or Tribunal in reaching its decision.

48. In the same letter, which was written some 3 weeks before the hearing date, which had been set for the 26th February, the solicitors say that they received final reports from the new experts on the 13th and 14th January 2015. Unfortunately, their valuer, Mr. Brooks, became ill but would return to work in a limited capacity (whatever that meant) on the 2nd February. They had previously asked for a 3 month adjournment but then asked for a 'short' adjournment of, in effect, a month, to enable both sides to instruct experts who could then have discussions.

49. The Applicant did not agree to the instruction of further experts and did not agree to the adjournment. It did not want to instruct further experts. The decision of the Tribunal chair, in writing, at that stage was that the hearing would go ahead but the applications relating to the expert evidence and adjournment could be renewed at such hearing.

50. At the hearing, the Tribunal was able to consider the further experts' reports and realised that they would not assist in the determination as to (a) whether planning permission was likely to be granted for a roof conversion in this road in this conservation area (b) what the cost of the works would be and (c) what profit could be made from the sale of the additional accommodation. The Tribunal therefore could have allowed reliance on the 2 extra reports and gone ahead with the hearing knowing that they did not assist the Tribunal. The result would have been inevitable and in those circumstances the Tribunal did not consider that it would be dealing with the case 'fairly and justly'.

51. It therefore decided to allow reliance on the reports but to adjourn the hearing to enable the Respondents to provide evidence which would actually assist the Tribunal. It ordered a feasibility study to be prepared dealing with (a) all possible alternative developments (b) the effect of a development on the adjoining, undeveloped, semi-detached property (c) means of access for the works and occupiers and (d) approximate costings. This was to be filed by the 26th March and then pre-planning application advice should be

obtained from Southend Council as to the planning position and filed by 7th May.

52. The Respondents never complied with those directions because, so their solicitors said, a cost of £5,000 to obtain the evidence was excessive, even though it was designed to support an extra claim of some £50,000. They decided, instead, to deal with matters their own way which involved the very late filing of further experts' reports.

53. The Applicant says that the first adjournment was not necessary and it wants its solicitors' costs for that hearing to be reimbursed. It says, in effect, that either the experts' reports should have been obtained in a timely fashion as soon as it was known that the development potential was being challenged within these proceedings or, in any event, the wrong reports were obtained at that time.

54. The question for this Tribunal to determine is whether it agrees with that and, then, whether such behaviour is 'unreasonable' in terms of the Respondents' conduct of these proceedings which is the terminology used by the rule. The determination of the Tribunal is that it agrees with the Applicant and it does find that the Respondents' conduct of these proceedings in respect of that hearing was unreasonable. It makes the order and as quantum is not challenged and the amount claimed appears reasonable to the Tribunal, the amount claimed is awarded.

Statutory Costs

55. As far as the valuation fee is concerned, the Tribunal determines that the travel costs should be charged at half the normal professional rate. For the reasons put to Mr. Brook at the hearing, it also considers that the time taken for research and obtaining comparables is too long. Most valuers now use internet sites which have links to the Land Registry to check on prices actually achieved. It should not take several hours to obtain this information in relation to comparables for this particular property. It allows 4 hours for that time including the preparation of the report making a total time of 9.8 hours with 2 hours of that time being charged at half the professional rate.

56. As far as the legal costs are concerned, there are many entries which cover costs which are not included within section 33 of the 1993 Act. In the Order made on the 26th February, the Tribunal said *"the solicitors' time sheet makes a large number of references to the counter-notice and to the solicitors being involved in the valuation process. Neither of these are mentioned in section 33 and neither can be said to be 'incidental to' the initial investigation, deducing title or undertaking the conveyance. How are these items justified please?"*. No appropriate justification was given.

57. What is also significant in the wording of section 33 is the pointed omission of anything relating to what happens in the event of a dispute. This is clearly designed, it is considered, to encourage agreement because in the event of dispute, neither party will be entitled to recover costs in relation thereto. Thus there is no mention of the service of a counter-notice, or any application to this Tribunal or its predecessor for a determination of any point in dispute. All of these matters are clearly anticipated in the 1993 Act

but they are not mentioned in section 33. If the legislators had intended to include them, it is this Tribunal's view that they would have been specifically mentioned.

58. Thus, as far as legal costs are concerned, the landlord is entitled to recover the legal costs in obtaining advice on the tenants' entitlement to collectively enfranchise and then the work involved in transferring title. To suggest, as some do, that the words "*and incidental to*" extend to include the solicitor instructing a valuer, advising on the valuation report and dealing with the counter-notice is wrong.

59. The Respondents were perfectly able to send office copies of the freehold title and leasehold titles to a valuer and ask for a valuation within the period allowed before a counter-notice is to be served. If it appears that proposals in the Initial Notice need to be challenged, then there is no agreement and the landlord has a choice. It can instruct lawyers to deal with the counter-notice and give advice on other matters such as the valuation, but it knows that it will have to pay for that.

60. The final determinations in respect of the costs are set out in the Second Schedule and total £742.00 plus VAT and disbursements of £6.

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Bruce Edgington
Regional Judge
13th May 2015

FIRST SCHEDULE

	No of Units	2	
	MV£ per Unit	£110,000	
	Total GDV£	£220,000	
	GDV		**£220,000**
1	Construction costs (2 flats)	£95,520	
	Kitchens	£10,000	
	Contingency incl extra for stairs	£10,000	
			£115,520
2	Finance Charges on Construction	0.0612	£7,069.82
3	Professional Fees	14%	£16,172.80
4	Finance Charges on Fees	0.0918	£1,484.66
5	Party Wall award		£1,500

	Costs at Practical Completion		**£141,747**
6	Finance Charges on Void Delay	0.0392	£5,556.49
7	Sales & Legal Fees	2.50%	£5,500.00
8	Profit 20% of GDV	20%	£44,000
	Total Costs		**£196,804**
	Balance for site acquisition (GDV less Total Costs)		**£23,196**
	Deduct Finance Charges on Site Acquisition	0.891	£20,667.83
	Residual Site Value		**£20,667.83**
	Additional Value (Dev Value of 2 flats)	£20,667.83	
	Adjustment for Risk	50%	**£10,333.92**
	Term & reversion Value (Agreed)		**£11,220**
	Price		**£21,553.92**
	Say		**£21,500**

SECOND SCHEDULE

CASE REFERENCE: CAM/OOKF/OCE/2014/0016

IN THE FIRST TIER TRIBUNAL

B E T W E E N :

22 PALMERSTON ROAD FREEHOLD LTD

Applicant

-and-

(1) ALAN DAVID PEARLMAN
(2) DAVID HAGER
(3) MELVYN MENDEL HAGER

Respondent

SCHEDULE OF OBJECTIONS TO COSTS AND DISBURSEMENTS CLAIMED BY THE RESPONDENT

Point 1	The Statement of Costs filed by the Respondent has not been certified by the solicitor. The Directions Order specifically states the

	Respondent's Statement of Costs must be "certified by the solicitor to say that these are the cost contractually payable by the client "and therefore the Respondent has not complied with this part of the Directions. No copy of the client care letter has been provided confirming the proposed costs and no copy letter from the Respondent has been provided accepting such a fee quote.
	Respondent's Reply: We enclose a certified copy of the Statement of Costs confirming the Respondent is contractually liable to pay the fees as set out in the schedule. The Tribunal Directions do not of course require the Respondents to produce a copy of the client care letter. Tribunal's determination The statement that the Respondent is contractually liable is noted
Point 2	The Statement of Costs refers to two fee earners. YM1 and LG1. The respondent has not set out the qualification and experience of the fee earners and has therefore not complied with this part of the Directions. This restricts the Applicant's ability to judge whether the costs incurred are reasonable or not.
	Respondent's Reply YM = Yashmin Mistry, Partner, 8 years PQE (£325 plus VAT/hour) LG = Laura Gill, Solicitor, 7 years PQE (£275 plus VAT/hour) Tribunal's determination The clarification is noted
Point 3	The Respondent has been charged at a rate of £325.00 per hour plus VAT. However this fee has not been justified as reasonable by the fee earners experience or location. The CPR's guide on Grade A fee earners in London Band 3 is £229-£267 per hour plus VAT.
	Respondent's Reply It is submitted, given the complexity of the premises, the issues arising as a result of the freehold claim (in particular, regarding the potential for development value), the importance of the matter to the clients and the complexity both in fact and law, it was reasonable for a Partner to deal with the matter. Enfranchisement is a process forced upon landlords and they are entitled to take all reasonable steeps to protect their position. What is reasonable depends upon the circumstances of the case. Here the property raises complex issues concerning the potential for development value. This is a complex matter and the landlord is entitled to seek a specialists to deal with the matter.

	The work and time expended by the Respondent's representatives was no more than any reasonable landlord of this particular property would have done. Tribunal's determination A client would not expect to pay an hourly rate which is above normal rates. A Grade A fee earner is expected to be the most experienced and able of all fee earners. Enfranchisement depends mostly on the experience and expertise of the valuer, not the solicitors, particularly where counsel is relied upon. As the rates have been static for some time, £265 per hour will be allowed. The time sheet is reproduced below with the Tribunal's determination in each case
Point 4	The Statement of Costs refers to fee earner LG1. The Respondent has been charged at a rate of £275.00 per hour plus VAT in the entry dated 18.09.14 ho9wever at entry dated 29.09.14 the same fee earner is charged at a rate of £325.00 per hour plus VAT. No explanation has been provided by the Respondent for this discrepancy.
	Respondent's Reply This is simply a typing error. The entry on 29th September 2014 for fee earner LG1 should be charged at £275 plus VAT/hour. This therefore changes the overall figure to £1,887.50. An amended spreadsheet is enclosed. Tribunal's determination Position noted
Point 5	The Respondent has charged one hour of time for anticipated time to completion. The Respondent has not made any effort to breakdown this time frame or provide details of the anticipated time to be spent. The Directions Order specifically states the Statement of Costs must set out "a breakdown of the number of hours spent or estimated to be spent" and "details of letters sent, telephone calls and those anticipated" and therefore the Respondent has not complied with this part of the Directions.
	Respondent's Reply From experience the Respondent's solicitors have allocated an hour of time for dealing with the matter through to completion and for dealing with post completion matters. This includes:

	• Producing engrossments of the transfer document; • Sending the engrossments to each of the parties for signature • Dealing pre-completion enquiries • Preparing completion statement • Apportioning figures for the completion statement • Dealing with completion formalities • Dealing with post completion formalities Tribunal's determination 1 hour seems to be reasonable as an estimate for this item
Point 6	The Statement of Cost does not set out, under the disbursements heading, the valuer's fees claimed. The valuer's fees have ben provided on a separate invoice sent from South East Leasehold Chartered Surveyors. The Respondent has not set out the valuer's qualifications and experience or provided a breakdown of the number of hours spent or estimated to be spent and has therefore not complied with this part of the Directions. This restricts the Applicant's ability to judge whether the costs incurred are reasonable or not.
	Respondent's Reply Please see attached. Tribunal's determination Breakdown noted
Point 7	The valuer's fees claimed are excessive and unreasonable. The Applicant fails to see how 13.8 hours has been spent by the valuer. The Applicant's valuer has charged £725 plus VAT in respect of the valuation report prepared and a further £200 plus VAT for updating the same following service of the notice. The Respondent's valuer's fees are more than double the Applicant's valuer's fees.
	Respondent's Reply Please see attached Tribunal's determination See main decision and reasons. The parties can re-calculate the figures
Point 8	The entry in the Statement of Costs dated 23.09.14 is charged as an email in. The unit charge for letters out and email out should include perusing and considering letters in and emails in. These should not be charged separately.
	Respondent's Reply There is no entry on the schedule dated 23rd September 2014. The Respondent is therefore unsure as to what the Applicants are

	referring to Tribunal's determination This is presumably intended to be the first entry on the list – see below.
Point 9	The entry in the Statement of Costs dated 11.08.14 is a duplication of the entry dated 07.08.14 and should not be claimed.
	Respondent's Reply These are two separate attendances on the Respondent on two separate issues. It is only correct that both entries should be charged for. Tribunal's determination The position is noted
Point 10	The entry in the Statement of Costs dated 13.08.14 is an administration task and should not be carried out by the fee earner. The time charged in this respect should not be recoverable.
	Respondent's Reply With respect to the Applicant's representatives, the entry is more than an "administrative task" as failure to serve a counternotice within the prescribed timeframes has disastrous consequences for the Respondent. Consequently, it is only correct that the entry should be charged for. Tribunal's determination See below

NOTE: some of the descriptions and columns have been truncated to allow all the columns to be included in this list

MATTER: 22 PALMERSTON ROAD, WESTCLIFF ON SEA

DATE	FEE EARNER	DETAILS	TYPE	UNITS	RATE	Tribunal's Decision
23-06-2014	YM1	Attending client - S13 notice, RTM , history of development etc	Email In	2.00	65.00	nil - incoming e-mail
23-06-2014	YM1	With Valuer re notice	Email Out	1.00	32.50	nil - not section 33
25-06-2014	YM1	With client and valuer re s13 notice and valuation	Email Out	2.00	32.50	nil - not section 33
25-06-2014	YM1	Attending Client re valuation and costs	Email Out	1.00	32.50	nil - not section 33
25/05/2014	YM1	To solicitor re instructions and deduction of title	Email Out	1.00	32.50	allowed at £26.50
25/06/2014	YM1	With valuer re title documentation and inspection arrangements	Email Out	1.00	32.50	nil - not section 33
25-06-2014	YM1	With solicitor re instructions of valuer	Email Out	1.00	32.50	nil not section 33
25-06-2014	YM1	With valuer and client	Email Out	1.00	32.50	nil not section 33

01-07-2014	YM1	Reviewing titlle dedcution from solicitor & reviewing S13 notice validity	Attending	5.00	162.50	allowed at £132.50
01-07-2014	YM1	To valuer with title documents	Email Out	1.00	32.50	nil - not section 33
01-07-2014	YM1	To valuer with contact details for tenants	Email Out	1.00	32.50	nil - not section 33
02-07-2014	YM1	With client and valuer re leases for development	Email Out	3.00	97.50	nil - not section 33
16-07-2014	YM1	Reviewing title, leases and drafting CounterNotice	Drafting	10.00	325.00	half allowed at £132.50
07-08-2014	YM1	With Valuer - reviewing valuation report and calculations	Email Out	1.00	32.50	nil - not section 33
07-08-2014	YM1	With client re valuation report and instructions for counternotice	Email Out	1.00	32.50	nil - not section 33
11-08-2014	YM1	With client re counternotice and instructions	Email Out	1.00	32.50	nil - not section 33
12-08-2014	YM1	To solicitors with counternotice	Letter Out	2.00	65.00	nil - not section 33
12-08-2014	YM1	With client and valuer re service of counternotice	Email Out	1.00	32.50	nil - not section 33
13-08-2014	YM1	Attending: checking delivery - courier	Attendance	1.00	32.50	nil - not section 33
21-08-2014	YM1	Reviewing letter from solicitor re counternotice price	Email Out	1.00	32.50	nil - not section 33
21-08-2014	YM1	With client and valuer re letter from solicitor re premium	Email Out	1.00	32.50	nil - not section 33
21/08/2014	YM1	To solicitor re valuer's details	Email Out	1.00	32.50	nil - not section 33
10-09-2014	YM1	To valuer with tenant's valuer's details	Email Out	1.00	32.50	nil - not section 33
18-09-2014	LG1	Drafting Transfer and email to solicitor	Email Out	5.00	137.50	allowed at £132.50
13-10-2014	YM1	Attending client and valuer	Email Out	1.00	32.50	nil - not section 33
27-10-2014	YM1	Reviewing amendments proposed by solicitor to transfer	Email Out	1.00	32.50	allowed at £26.50
29/09/2014	LG1	Attendance on solicitor re transfer	Email Out	1.00	27.50	allowed at £26.50
11-11-2014	YM1	Attending solicitor re costs	Email Out	1.00	32.50	nil - not chargeable
Anticipated Time To Completion	YM1	Anticipated time re apportionments, completion and post completion matters	Attendance	10.00	325.00	allowed at £265

FEE EARNER:

YM1	Yashmin Mistry	£325 plus VAT and disbursements / hour	**TOTAL**	**#####** £742.00 plus VAT
LG1	Laura Gill	£275 plus VAT and disbursement / hour		**But Say, £1850 plus VAT**

DISBURSEMENTS

24-06-2014	YM1	Office Copies	3.00	allowed
12-08-2014	YM1	Courier	25.86	not section 33
13-08-2014	YM1	Office Copies	3.00	allowed