

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/24UP/OLR/2007/0027

Property : Lower Clevedale, 24 Christchurch Road, Winchester, Hants SO23 9SS

Application : Determination of the price to be paid and terms of acquisition of an extended lease [Leasehold Reform, Housing & Urban Development Act 1993, Part I & Sch 13]

Applicant : Paul Jonathan Mitchell, Lower Clevedale, 24 Christchurch Road, Winchester, Hants SO23 9SS

Respondent : Michael Schofield & Susan Jane Schofield, Middle Clevedale, 24 Christchurch Road, Winchester, Hants SO23 9SS

DECISION

following consideration of written submissions

Handed down : 17th September 2007

Tribunal : G K Sinclair, J R Humphrys FRICS, Mrs S Redmond BSc (Econ) MRICS

Introduction

1. Lower Clevedale is a flat comprising the ground floor and cellar of a substantial two storey converted house on the western or railway side of Christchurch Road, a short walk from the historic city centre of Winchester. It is currently held by the Applicant under a lease dated 13th August 1977 for a term commencing on that date and expiring on 24th March 2064. The lease was first registered at HM Land Registry under Title No HP638533 on 20th January 2004, the Applicant being registered as proprietor on 15th August 2006.
2. By notice dated 14th January 2007 the Applicant lessee applied to the Respondent lessors for a statutory extension of his lease. By counter-notice dated 10th April 2007 the Respondent admitted the Applicant's right to a new lease. The lessor disputed the proposed price, and suggested that a new modern lease would be preferable.
3. A hearing date was arranged for Friday 14th September 2007, but shortly before the tribunal was informed that the Applicant had declined to accept a modern lease and that agreement had been reached on both the premium and the terms of the extended lease. The only issue requiring determination by the tribunal was therefore the amount of the

lessor's costs payable by the Applicant.

Applicable law

4. Section 60 of the Leasehold Reform, Housing & Urban Development Act 1993 provides that :
- (1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely –
 - (a) any investigation reasonably undertaken of the tenant's right to a new lease;
 - (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
 - (c) the grant of a new lease under that section...
 - ...
 - (5) A tenant 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 parties' submissions

5. By directions dated 13th June 2007 the Respondent was required by 13th July 2007 to serve on the Applicant a detailed statement of costs claimed. By 27th July the Applicant was to serve on the Respondent a schedule of objections to the costs and disbursements (in the form recommended for use under the Civil Procedure Rules 1998), and by 3rd August the Respondent was to reply to such objections. These directions have been complied with, and the tribunal has considered the documents served.

Findings

6. The statement of costs submitted by the Respondent identified the valuer's fee (£320 plus VAT) and the solicitor's hourly rate of charge (£160 plus VAT). Neither is disputed.
7. The statement is then divided into two parts, the second of which erroneously includes the "further costs to be incurred" in connection with the tribunal hearing. Such costs are not allowable by section 60(5), and when this was pointed out on behalf of the Applicant the Respondent's solicitors quickly conceded that they were correct. Another general comment made by the Applicant is that this is one of two similar applications being made in which the same two firms of solicitors are involved, so that much duplication of effort should be reflected in a discount applied to each bill of costs.
8. That apart, those items left in issue are listed in the statement of case, objections and reply. In the interests of clarity the parties' respective submissions can be recorded in the table below :

<i>Item</i>	<i>Resp S/C</i>	<i>Ap objectn</i>	<i>R reply</i>
<i>a</i> Considering Applicant's s.42 notice	1 hr	15m	45m
<i>b</i> Reporting to clients	1 hr 12m	30m	45m
<i>c</i> Advising clients	1 hr 18m	silent	silent
<i>d</i> Drafting counter-notice	54 m	30m	54m
<i>e</i> Perusing valuations	1 hr 6m	30m	1 hr 6m
<i>f</i> Reporting to client	1 hr 6m	30m	1 hr 6m
<i>g</i> Drafting new lease	2 hr 12m	1 hr 6m	2 hr 12m
<i>h</i> Preparing estimate of costs	1 hr 18m	n/a	agreed
<i>i</i> Preparing abstract of title	1 hr 18m	30m	50m

9. The tribunal finds as follows :

- a. The section 42 notice is relatively straightforward and does not require a great deal of time. However, lease extensions are not an everyday activity and it is proper that the solicitors have time to consider the statutory provisions and also check the Applicant's entitlement to a new lease
- b. The Respondent's solicitors argue that "this has taken longer than usual as our clients are often away and we communicate by e-mail". The tribunal does not see why e-mail should take any longer than correspondence by letter. The only difference is in the means of transmission, with e-mail being quicker and involving immediate electronic dispatch rather than printing, placing in an envelope, and physical posting. For both a & b the tribunal allows a combined total of 1 hour
- c. The tribunal sees no difference between reporting to clients and advising them. No separate time is allowed.
- d. The counter-notice is straightforward. The only item in dispute is the premium although the opportunity is taken to raise a non-statutory matter, viz whether a modern lease would be preferable to a mere extension of the existing one. This should in fact follow item e (the valuation). The tribunal allows 30 minutes
- e. The only matters upon which the solicitors need satisfy themselves are whether the valuer has properly applied the statutory assumptions when valuing the price payable. This does not take over an hour. 30 minutes is allowed
- f. Reporting to client. The tribunal is unsure whether this means reporting on the valuation or upon the Applicant's response to it, or all communication with the client after serving the counter-notice. Either way, the time claimed is excessive and the tribunal allows 30 minutes
- g. For some time the course being proposed and followed was the drafting of a new modern lease. This followed a standard template apparently employed for at least one other flat in the building. At a very late stage, however, the Applicant changed his mind and so a new bespoke lease had to be prepared, containing necessary amendments to specific provisions in the 1977 lease. Ensuring that this is done properly requires time. The tribunal allows two hours

- h. This item is not allowable
- i. The tribunal is puzzled why time needs to be taken in preparing an abstract of title for registered land. The freehold reversion may be unregistered, but is there any need to check the lessor's own title? Should the Applicant pay for this? The tribunal notes that the Applicant's solicitors merely query the time claimed, so the 30 minutes conceded will be allowed.

10. The total time allowed by the tribunal is therefore 5 hours at £160 per hour. The costs payable by the Applicant are therefore :

5 hours @ £160 =	£800.00	plus VAT of	£140.00	£940.00
Valuer's fee of	<u>£320.00</u>	plus VAT of	<u>£56.00</u>	<u>£376.00</u>
Total :	£1,120.00		£196.00	£1,316.00

Dated 17th September 2007



Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal