

**IN THE LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 S33**

Case Number	CHI/00HN/OC9/2008/009
Property	Wychwood 2a Grosvenor Road Bournemouth
Applicant	The Trustees of the Alice Ellen Cooper-Dean Charitable Foundation Represented by Preston Redman, Solicitors
Respondent	Wychwood Freehold Ltd Represented by Coles Miller, Solicitors
Tribunal members	Ms H Clarke (Barrister) (Chair) Mr R A Wilkey FRICS FICPD
Date of consideration	21 April 2009
Date of decision	23 April 2009

1. THE APPLICATION

The Applicant asked the Tribunal to determine the amount of the costs which the Applicant could recover from the Respondent under s33 Leasehold Reform Housing & Urban Development Act 1993 ('The Act'). The amount claimed by the Applicant was £3,156.50 net of VAT.

2. DECISION

The detailed decision of the Tribunal on each point of dispute is annexed as a table, and refers to the itemised breakdown of costs supplied by the Applicant's solicitors.

3. CONSIDERATION

Neither party requested an oral hearing. Following Directions an agreed trial bundle was filed along with points of dispute from both parties.

4. The parties also put a large number of earlier decisions of the LVT before the Tribunal. Whilst such decisions are not binding on the Tribunal it is desirable that there should be a consistency of approach and the Tribunal accordingly considered the decisions when making its determination.

5. THE LAW

The relevant part of the Act in relation to costs provides that the nominee purchaser

shall be liable for the reversioner's reasonable costs of and incidental to matters incurred in pursuance of the notice (s33 Leasehold Reform Housing & Urban Development Act 1993). Costs for professional services shall only be regarded as reasonable to the extent that they might reasonably be expected to have been incurred by the reversioner if personally liable for them (s33(2)). Costs incurred in connection with proceedings before the Tribunal shall not be recoverable under s33 (s33(5)).

6. THE SUBMISSIONS

The hourly rate charged by the Applicant's solicitors was not challenged. Objections to the costs fell into several broad categories: costs said not to fall within the scope of s33, in particular the costs of preparing and serving a counter-notice, a Transfer of permanent rights, and notices under s62 Law of Property Act 1925; the costs of negotiating and seeking advice and instructions on the proposed valuation; costs incurred after the commencement against the head lessee of Tribunal proceedings; and costs which were said not to be reasonable, particularly correspondence relating to a draft contract, costs relating to the issue of costs itself, and correspondence which was merely chasing or acknowledgement and was said not to 'progress' the matter.

7. The Applicant responded that the counter-notice, draft transfer and s62 Notices were incidental to the conveyance and/or investigation of the right to acquire. Costs were incurred after the start of Tribunal proceedings, but it was asserted as a matter of fact that the correspondence was not generated in connection with the proceedings but related to the underlying enfranchisement. Costs in connection with a proposed contract were reasonably incurred because the Respondent had unreasonably sought to insist on there being a contract. Discussions with valuer and client regarding valuation, and work done on costs, were normal incidents of the work covered by s33.

8. REASONS FOR THE DECISION

The Tribunal's decision on the challenged items is set out in table form annexed to these reasons, to be read in conjunction with the following paragraphs.

9. The Tribunal accepted the submission of the Respondent that not all costs incurred by a freeholder would be recoverable from the nominee purchaser. However the Tribunal also took the view that enfranchisement under the 1993 Act may understandably be regarded as a form of compulsory purchase from an unwilling seller at a price below market value. Accordingly, it would be surprising if freeholders were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them. This led the Tribunal to take the view that the provisions of s33(1) should be given a broad meaning, whilst bearing in mind the constraints and limitations imposed by the reasonableness s33(1) and (2).

10. In particular, the Tribunal considered that the preparation and service of the

counter-notice and Transfer in this case were property to be regarded as costs of or incidental to investigation of a question arising out of the initial notice, and/or incidental to conveyance of an interest in the specified premises or other property. Section 33(1) e) is not limited to conveyance of the freehold, but of 'any interest', and the Tribunal took the view that this was wide enough to include the permanent rights to be granted.

11. The Tribunal also took the view that service of notices under s62 were incidental to the conveyance as the need for them arose by virtue of the conveyance of the freehold itself.
12. The Tribunal noted that the provisions of s33(2) limited costs to those which might reasonably be expected to have been incurred if the freeholder were to be liable for them. This description however did not preclude the normal costs of proper conduct and care of a matter, including acknowledgement, maintaining control of costs, and chasing correspondence where necessary, provided that the degree and extent of the costs so incurred remained proportionate; the same applied to costs of discussions with the valuer and client concerning valuation (which the Tribunal considered to be incidental to the costs of the valuation itself).
13. The correspondence relating to the issue of a draft contract arose, it appeared, because the nominee purchaser did not initially agree to move straight to completion. No convincing reason was given to the Tribunal as to why there was this reluctance, and indeed had a contract been provided, the costs of drafting it may have been susceptible to challenge as being unnecessary. In the circumstances the Tribunal did not find the correspondence costs to be unreasonable.
14. Correspondence to the parties on the day of and in relation to the completion was clearly incidental to the conveyance, in the Tribunal's view.

Signed hmc

Dated 23-04-09

H M Clarke (Chair)

ITEMS IN DISPUTE (refers to Breakdown of Costs supplied by A)	DECISION	OBJECTION	REASONS IN BRIEF
Number 4	Disallowed	Not demonstrably within s33	Insufficient information as to what work was done
17	Allowed	Did not progress matters	Proper conduct of s33 matters includes chasing/ acknowledgment
18,19,21,22,23	Allowed	Not reasonable	Proper conduct of s33 matters includes chasing/ acknowledgment
24-31, 33-36, 43-55	Allowed	Counter-notice costs not within s33	Counter-notice costs incidental to investigation and conveyance
37-41	Allowed	Discussing valuation outside s33	Incidental to costs of valuation
42	Disallowed	N/a	Not reasonable to charge for call to engaged phone
56, 58, 59, 72, 78-84	Allowed	Discussing valuation outside s33	Incidental to costs of valuation
85, 87	Allowed	Discussing valuation outside s33	Incidental to costs of valuation
89-95	Disallowed (89 not charged in any event)	In connection with LVT	Insufficient information as to what work was done
97-99	Allowed	In connection with LVT	Not in connection with LVT, on facts
100,106-108, 111, 114, 117, 118, 120, 123, 124, 134, 136	Allowed	Unreasonable	Proper conduct of s33 matters includes chasing/ acknowledgment
101, 109	Allowed	Unreasonable, and contract outside s33	Reasonable for freeholder to propose moving straight to completion, incidental to conveyance
112, 113, 116, 121, 125, 126, 135, 136, 138, 139, 141, 142	Allowed	Unreasonable as contract was a prescribed step	Reasonable for freeholder to propose moving straight to completion

115	Allowed	Unreasonable	Proper conduct of s33 matters includes chasing/ acknowledgment
127, 128	Allowed	Outside s33	Incidental to conveyance
130, 131, 133	Allowed	Outside s33	Incidental to conveyance
140	Not charged in any event		Not charged
147-151	Allowed	Post completion so outside s33	Incidental to conveyance