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ReTWf LON//00BK/OAF/2012/0026

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION
UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967**

Applicant Church Commissioners for England

Respondent: Windsor Properties Corporation

Premises 38 Hyde Park Street London W2 2JS

Date of Tenant's notice: 14th February 2012

Application date: 21st May 2012

Hearing date: 4th June 2013

Valuation date: 14th February 2012

Appearances:

For the Applicant: M E Johnson QC instructed by Radcliffe Le Brasseur solicitors
Mr A Marsh Legal executive of Radcliifes Le Brasseur
Ms V Kelsey MA MRICS of Knight Frnak

For the Respondent Ms K Bowen solicitor of Statham Gill

Also Present Mr D Cooper of David Cooper & Co solicitors

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB (Hons)
Mr R Potter FRICS

Date of Tribunal's decision: 4th June 2013

Valuation

- 7 Ms Kelsey gave evidence in accordance with her report dated 22nd May 2013 and was questioned by Mr Johnson and the tribunal. No cross examination was offered by Ms Bowen and nothing in the report was challenged.
- 8 Ms Kelsey had arrived at a figure of £6,177,600 for the freehold value of the property. She had used five comparable properties 2, and 5 Southwick Place, 6 Gloucester Square 19 Radnor Place, and 30 Hyde Park Street. All properties were within walking distance of the subject property .She produced at Appendix of her report an analysis of the adjustments which she made for time location, length of lease and condition. Having taken an average of the square footages of each of the properties as adjusted she arrived at a figure of £1,300 per square foot from which she derived the value of the freehold.
- 9 In arriving at the existing lease value she relied heavily upon the graphs and in particular decided to apply the Knight Frank Graph which she stated was up to date and fair in the sense that it was based on settlements on behalf of landlords and tenants. She produced comparables settlement figures based on a series of properties in Hyde Park Street and 10 Connaught Close which produced relativities above and below the figure in the graphs. .She finally settled on the Knight Frank graph figure which included settlements from 40% houses
- 10 She applied deferment rate of 4/75%in accordance with the guidance in Sportelli and applied a capitalisation rate of 6%.
- 11 The tribunal considered that the figures produced by Ms Kelsey and the analysis supplied was reasonable and the Respondent did not disagree. The tribunal therefore determined the value of the premium in the sum of £2,848 000
- 12 The terms of the transfer are set out in the main bundle at Tab 7. The tribunal perused the terms of transfer and in the absence of any objection was satisfied that it was correctly drawn
- 13 The tribunal finally considered the question of statutory costs. . The valuation costs were evidenced in Appendix 10 of Ms Kelsey's report in the sum of £5,162.40 including VAT at 20% this is based on just over 14.5 hours at the rate

of £300 per hour. The tribunal considers this figure to be reasonable and determines it accordingly

- 14 Mr Marsh of Radcliffes gave evidence in support of the claim for legal costs. . These cost amounted to £5,924.16 inclusive of VAT His charge out rate was £200 per hour which the tribunal judged as reasonable for a legal executive in the Westminster area.
- 15 He explained that these costs were higher than usual in that he had to engage in lengthy correspondence with the Respondent's original solicitor A S Louca and then there were a number of changes of solicitors and there were questions raised in 12th September 2012 when the issue was raised as to the authority of the wife as signatory of the notice.
- 16 Costs incurred up to the date of the counter notice in March 2012 amounted to £540 plus VAT and then on 29th June a further £280 incurred in preparation of the draft transfer (i.e a total of £984 inclusive of VAT at 20%) All the additional costs were incurred in the correspondence with the solicitors. No issues had arisen between March and September other than correspondence with different solicitors but relating to the transfer
- 17 The Tribunal queried whether the additional costs were recoverable and Mr Johnson submitted that they were recoverable under Section 9(4) (a) of the Act which provided
*"Where a person gives notice of his desire..... there shall be borne by him the reasonable costs of or incidental to
(a) any investigation by the landlord of that person's right to acquire the freehold"*
- 18 Mr Johnson submits that all the correspondence relates to the authority of the signatory and that is a proper line of enquiry The costs between March and 12th September 2012 excluding the costs of the transfer are £1224 inclusive of VAT
- 19 After September the Applicant reopened the enquiry as to the title to the property in questioning the authority of the signatory These costs amount to £3696 inclusive of VAT
- 20 It is difficult to analyse each letter to ascertain its precise relevance and the tribunal in the final analysis is entitled to take a "broad brush" approach as has

been applied in many other costs cases. It is not the fault of the Applicant that these further costs had to be incurred but the costs are not recoverable on an inter partes basis unless governed by the section

21 The tribunal considers that Applicants solicitor was entitled to make further enquiries but considers that the amount of additional costs incurred is somewhat excessive. The tribunal therefore in adopting a broad brush approach has determined to allow the costs in the sum of £4000 plus VAT

Conclusion

22 (a) The tribunal determines the premium at £2,848,000 .The valuation is set out at Appendix 13 of the report of Ms Vanda Kelsey

(b)The terms of the transfer are approved as set out in tab 7 of the Hearing Bundle

(c) Valuer's costs are approved in the sum of £5,162.40 inclusive of VAT

(d) Legal costs approved in the sum of £4,800 inclusive of VAT

Chairman Peter Leighton

Date 4th June 2013

