

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

**APPLICATION UNDER SECTION 91 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicants: Mr I Stapleton, Mr C Griffiths & Ms E Plaistowe

Respondent: Jensen Faulkner Ltd

Re: 4 Queensthorpe Road, London SE26

Paper hearing date: Tuesday 11 April 2006

Members of the Leasehold Valuation Tribunal:

**Mrs T I Rabin JP
Mr J R Humphrys FRICS**

4 QUEENSTHORPE ROAD LONDON SE 26 4PH

FACTS

1. The Tribunal was dealing with an application under Section 91(d) of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") for a determination of the level of costs to be paid in relation to an application under Section 13 of the Act. The Application related to the freehold of 4 Queensthorpe Road London SE26 4PH ("the Building") and was made by the Applicants, Clive Griffiths, Elaine Plaistow and Ian Stapleton, the long leaseholders of the Building. The Applicant Landlord was Jenson Faulkner Limited.
2. The Applicants made an application under Section 13 of the Act by serving an initial notice dated 20th January 2005 stating that they were prepared to pay £16,500 for the freehold interest in the Building and requiring a counter notice to be served by the Respondent on or before 28th March 2005. The Respondent served a counter notice dated 18th March 2005 which did not admit the Applicants' right to acquire the freehold on the basis that the Building was excluded from Clause 4(1) of Chapter 1 of the Act as part of the Building, namely the basement, comprised more than 25% of the internal floor area and was neither occupied nor intended to be occupied for residential purposes or comprised in any of the common parts of the Building.
3. The Applicants' solicitors wrote to the Landlord's solicitors on 29th March 2005 requesting copies of any calculations or drawings upon which the Landlord relied in claiming that the Building was exempt due to the 25% rule. Similar requests were made on several occasions and total measurements were provided, but without plans, on 13th May 2005. It appears from the letter from the Respondent's solicitors dated 13th May 2005 that an inspection may have taken place on behalf of the Applicants on 12th May 2005, although this letter conflicts with the Applicant's statement of case which states at paragraph 6 that their surveyor gained access on 17th May 2005 and reported to the Applicants on 24th May 2005. The statement of case also disclosed that the Applicants were unable to gain access to the basement any earlier, since the basement was kept locked at all times, despite the fact that the lease permits access.
4. The Applicants issued an application in the Brighton County Court on 20th May 2005 for a declaration as to the validity of the initial notice. As a result of advice given this application was discontinued on 22nd June 2005. Following this the Landlord's solicitors submitted a breakdown of the costs they were claiming under Section 33 of the Act in relation to the proceedings. These costs were £7,700 plus VAT making a total of

£9047.50. This figure is disputed by the Applicants who have made this application to the Tribunal for the costs to be determined in accordance with Section 91(d) of the Act.

The Law

5. The Respondent's costs for which the Applicants are responsible following the service of a notice under Section 13 of the Act are set out in Section 33 (1) of the Act. This states:

- 33(1) Where a notice is given under Section 13 then.....the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following:
- (a) any investigation reasonably undertaken:-
 - (i) of the question whether any interest in the specified premisesis liable to acquisition in pursuance of the initial notice;
 - (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....;
 - (e) Any conveyance of such interest
- But this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void
- 33(2) For the purposes of sub-section (1) any costs incurred by the reversioner in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable.

EVIDENCE AND DECISION

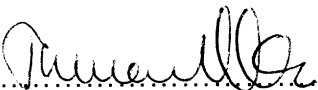
6. The evidence before the Tribunal is contained in the Applicant's bundle and correspondence between both firms of solicitors. In summary, the Respondent's solicitors claim that they incurred 6.6 hours of partner's time (Grade A) at £320 per hour and 31.1 hours for a trainee solicitor (Grade D) at £180 per hour. There was a narrative description of the work undertaken by the Respondent's solicitors and this included a considerable amount of time in discussing matters with the Respondent not strictly relevant to the application as well as time spent by the trainee in consultation with his supervisor. It appears from the papers before the Tribunal that there may have been a stop notice in relation to the basement and that the Respondent is seeking planning consent for the basement. These matters are outside the scope of Section 33 and any costs referring to them will be disallowed in full.
7. When assessing the level of costs which are reasonable the Tribunal must have regard to the matters which can properly be charged to the applicant pursuant to Section 33(1) as well as the complexity of the case and the value of the freehold. Section 33(2) of the Act clearly provides that costs will only be regarded as reasonable if they are at a level where the reversioner would be expected to bear these costs if he were personally

responsible. The items which are chargeable are limited by Section 33(1) of the Act are clearly set out and in this case are restricted to the provisions of Section 33(1) (a) covering any investigation reasonably undertaken as to whether the freehold interest in the Building is liable to be acquired by the Applicants in accordance with the Act or any related advice. The Tribunal recognises that the Respondent can use a firm of solicitors of its choice but, if a large London firm is instructed to deal with an application of this nature, the costs claimed must be reasonable and must be limited to those allowable under Section 33(1). In the instant case the Respondent did not incur any costs under Section 33(1) (b)-(e).

8. The Tribunal has considered the Schedule prepared by the Respondent's solicitors and have concluded that it took little time for the solicitors to establish that the Applicants were qualifying tenants and that the Building may have been excluded from the right to enfranchise as it may not have fallen within the description in Section 4 of the Act. This is reasonable and no more than the Tribunal would have expected from a firm of this stature. The solicitors appear to have come to these conclusions by 7th February 2005 and by 23rd February 2005 it appears that they had established that the dimensions of the basement could mean that the Building fell within the description in Section 4 and that this could be an "option to defeat claim". After that date many hours were spent in giving advice to the Respondent which did not appear to fall within the parameters of Section 33(1) (a) but which was included in the Schedule of costs.
9. It is the view of the Tribunal that, had the Respondent been responsible for its own costs, it would not have authorised expenditure of almost £10,000 on a property which may only have a value of £16,500 in order to defeat a tenant's notice under Section 13 of the Act. The Tribunal accepts that a Respondent may choose an expensive solicitor as it is their choice. However he would expect succinct and speedy advice in relation to a property of this nature. It was established early on that the Applicants were qualifying tenants and that the way to defeat the claim was to prove that the non-residential area exceeded 25% of the total internal area. This is a matter of fact and can be easily established. It is not clear when the measurements were available and it may be that they were ready to hand in connection with the Respondent's planning application. The Applicants were not afforded the opportunity to measure the basement, despite frequent requests. Had they been allowed to do so, they may well have abandoned their claim earlier.
10. The completion of a reversioner's counter notice is no more than filling in a form and not a complex task, yet the Respondent's solicitors are claiming over four hours work. If the Respondent was paying his own costs he would no doubt have been willing to disclose his plans and measurements and calculations at an early stage in order to bring the matter to a speedy conclusion and limit his costs. The Applicant's have stated that they do not consider that any of the costs following the counter notice should be allowed as they would be outside the scope of Section 33(1). In this case the Tribunal considers that there were matters within the scope of Section

33(1) (a) which arose after the counter notice was served. However, it appears that these could easily have been addressed prior to the counter notice being served and the allowance post-counter notice will be limited.

11. Having regard to the complexity of the application and the likely value of the Building the Tribunal considers that a reasonable figure for costs would be a senior solicitor's time for an hour and half at £320 per hour and six hours of a trainee's time at £180 per hour would be appropriate in all the circumstances, having regard to the considerations in Section 33(2) and the conduct of the parties. This is a total of **£1560 plus VAT**.

CHAIRMAN.....

DATED: 12th April 2006