Reception.

Ref LON/ENF/1005/03

LEASEHOLD VALUATION TRIBUNAL

FOR LONDON RENT ASSESSMENT PANEL

DECISION

ON APPLICATION UNDER SECTIONS 33 AND 91 OF LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

Premises: Chivelston, 78 Wimbledon Parkside, London SW19

Applicant: Daejan Investments Freehold Ltd (Reversioner)

Respondent: Parkside 78 Ltd (Nominee Purchaser)

Application to Tribunal dated 19 December 2003

Hearing: 4 May 2004

Appearances:

Mr Simon Serota with Miss Helen Smith of Wallace & Partners Solicitors *(for Reversioner)*

Mr Roger Elford of Charles Russell Solicitors *(for Nominee Purchaser)*

Members of the Leasehold Valuation Tribunal:

PROFESSOR J T FARRAND QC LLD FCIArb Solicitor (Chairman)

MR P A COPLAND BSc FRICS

MR S E CARROTT LLB

Introductory

1. By an Initial Notice under s.13 of the 1993 Act (dated 20 March 2003), qualifying tenants had proposed to acquire the freehold of the premises together with specified amenity land and scheduled rights for a price totalling £92,000. By its Counter-Notice under s.21 of the 1993 Act (dated 27 May 2003) the Reversioner had admitted the right to enfranchise and accepted the proposals to acquire the premises and the amenity land, but differed as to rights to be granted and reserved and as to the price, proposing £951,310 for the premises (but accepting £100 for the amenity land).

2. However, in the covering letter to the Counter-Notice it was stated to be without prejudice to the Reversioner's contention that the Initial Notice was invalid, because the proposed price was unrealistically low. The Tribunal was informed that, in consequence of that contention, the enfranchisement had not proceeded but a fresh Initial Notice had been served, which was currently the subject of County Court proceedings.

3. The present Application, therefore, was to determine the amount of costs repayable by the Nominee Purchaser to the Reversioner as incurred in pursuance of the first abortive Initial Notice within s.33(1) of the 1993 Act. The Applicant sought £4,734 for legal fees and £4,050 for valuer's fees, both plus VAT, totalling £10,337.20, and had submitted in support a copy of the valuer's invoice together with a schedule of legal costs. It was not disputed that these fees had been incurred after the Initial notice had been served and related only to the preparation of the Counter-Notice.

Hearing

4. The Tribunal had received a Statement on behalf of the Nominee Purchaser admitting liability for the Reversioner's reasonable costs within s33 of the 1993 Act, but challenging charging rates and duplication. Consistently with this, no point was taken by Mr Elford as to implications for reasonableness of costs incurred of the invalidity of the Initial Notice.

5. For the Reversioner, Mr Serota explained that he was a Grade A fee earner with considerable experience and expertise in the complexities of leasehold enfranchisement, that enfranchisement of these premises involved exceptional difficulties, as well as sensitivities arising from the landlord/tenant relationship, and that instructions to his assistant did not involve duplication of work. He submitted that his charging rate of £300 per hour was justifiable as reasonable, notwithstanding that the relevant Wandsworth County Court "guideline rate" was only £263 per hour. He added that his assistant's rate (£180 per hour) was below the relevant

"guideline rate" of £200 per hour for a Grade B fee earner. In addition he supported the hours taken in preparation of the Counter-Notice by reference to the drastic consequences of failure duly to serve one which was valid: the proposals in the Initial Notice would become indisputable. Further, he drew attention to the complications of differing rent review provisions, lease-backs and roof-space development potential as justifying the time spent and charges incurred in valuation.

6. For the Nominee Purchaser, Mr Elford asserted that it had been unnecessary for a Grade A fee earner in a Central London firm to be instructed to undertake so much of the work of preparation of a fairly straightforward Counter-Notice and insisted that the detailed costs schedule evidenced unnecessary duplication between partner and assistant. He also submitted that the familiarity with the premises and the leases of the solicitor and valuer primarily concerned meant that they had taken an unnecessary time over the work and that their charging rates were excessive (ie £300 and £250 per hour respectively). Without attempting any detailed costing exercise, his request was that the Tribunal should reduce the costs recoverable from his client accordingly.

Decision

7. As a matter of practicalities, the Tribunal was not persuaded that the employment of Mr Serota and his firm to handle the legal aspects in this as in previous enfranchisement cases was unreasonable on the part of the Reversioner. The position also seemed essentially the same as to the very experienced valuer used by the Reversioner for the purposes of the Counter-Notice. Nor was the Tribunal persuaded that, in the complex circumstances of the premises and leases, especially given the values apparently involved, that any of the time taken by principals or assistants was unnecessary. Further, the Tribunal accepted Mr Serota's point that county court costs guidelines are not 'caps' but only 'broad approximations' for charging rates. The Tribunal also considered that those guidelines were for rates of costs in contentious proceedings between litigating parties, not for what were generally charges to clients for work which was non-contentious in nature. Further, the Tribunal understands that those guideline rates do not represent indemnity costs whereas here the statutory intention appears to be that reversioners should be indemnified foe the costs of enfranchisement.

8. As a matter of principle, in the view of the Tribunal, leasehold enfranchisement under the 1993 Act may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and 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. Parliament has indeed provided that this expenditure is recoverable, in effect, from tenant-purchasers subject only to the requirement of reasonableness (see s.33(1) of the 1993 Act).

9. As to what is "reasonable" in this context, it is merely provided that "any costs incurred by the reversioner or any other relevant landlord 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 was personally liable for all such costs" (s.33(2) of the 1993 Act). The Tribunal considers that this 'reasonable expectation' test is satisfied here.

10. The statutory test does not turn upon what tenant-purchasers may reasonably expect to be their liability. Thus the Reversioner was not required to find the cheapest nor even cheaper solicitors or valuers but only, in effect, to give such instructions as it would ordinarily give if it were itself going to be bearing the cost of paying the solicitors and valuers for acting, as it will be contractually obliged to in so far as recovery cannot be obtained from the Nominee Purchaser. No suggestion was made to the Tribunal that the Reversioner would not have employed the same firms of solicitors and valuers concerned on the same terms on its own behalf or would not have accepted liability for dealing with a complicated matter properly.

11. Accordingly, the Tribunal is not prepared to determine that any of the costs in issue are unreasonable and they are, therefore, payable in full by the Nominee Purchaser.

CHAIRMAN

DATE 5th May 2004