

MIDLAND RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

BIR/41UD/0C6/2006/0004
BIR/41UD/0C6/2006/0005
BIR/41UD/0C6/2006/0006
BIR/41UD/0C6/2006/0007
BIR/41UD/0C6/2006/0008
BIR/41UD/0C6/2006/0009
BIR/41UD/0C6/2006/0010

**DECISION OF LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM ACT 1967**

Applicant : Donald Terry, Joan Terry & Others
Respondent : Lichfield District Council
Property : 29, 39 & 43 Gilbert Road, Lichfield WS13 6AR
46, 50, 54, 62 Gilbert Road, Lichfield WS13 6AX
Valuation Date : Not Applicable
Heard at : Birmingham Panel Offices
On : 7th June 2006
Appearances :
For the Applicant : Mr J Moore (Midland Valuations Limited)
For the Respondent : None

Members of the Tribunal : Mr D Jackson (Chairman)
Mr R Kington FRICS MCI Arb
Mrs A M Bartram

Date of decision : 20 JUN 2006

1. BACKGROUND

This is a decision of the Leasehold Valuation Tribunal in relation to 7 properties limited solely to the determination of the reasonable costs payable by the Applicants under Section 9(4) of the Leasehold Reform Act 1967 ("the Act").

2. The Tribunal has been advised that the price payable for enfranchisement has been agreed between the parties.

3. The following table sets out details of the Applicants and the date of the relevant notices and applications :-

<u>Property</u>	<u>Applicant</u>	<u>Notice of Claim</u>	<u>Application to determine price</u>	<u>Application to determine costs</u>
29	Donald Terry & Joan Terry	7 July 2005	8 September 2005	24 March 2006
39	Robert Asson & Trudy Asson	4 July 2005	8 September 2005	27 March 2006
43	Leonard Davis & Sylvia Davis	4 July 2005	8 September 2005	27 March 2006
46	Trevor Parsons	13 July 2005	16 September 2005	27 March 2006
50	Frank Holt & Patricia Holt	4 July 2005	8 September 2005	27 March 2006
54	David Chrisfield and Margaret Chrisfield	22 June 2005	1 September 2005	27 March 2006
62	David Spooner	4 July 2005	8 September 2005	27 March 2006

4. The Applicants hold their respective tenancies under the terms of 99 year under-leases made on various dates between the Applicants and Trident Housing Association who are their immediate landlord. The freehold reversioner in each case is the Respondent Lichfield District Council.
5. On 4th January 2006 Midland Valuations Limited wrote to the Tribunal advising that terms had been agreed between the parties for both the price to be paid for the freehold and head lease and extent of the landlord's costs. Accordingly the original applications were withdrawn.
6. On the dates set out in the table in paragraph 3 of this decision, Midland Valuations Limited wrote to the Tribunal enclosing Applications for the determination of the Landlord's Costs and it is those applications which are the subject of this determination.
7. ISSUES FOR DETERMINATION
The jurisdiction of the Tribunal is contained in Section 21(1)(ba) of the Act.
8. Under Section 9(4) of the Act the Applicant is responsible:
“(so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:-

- (a) Any investigation by the landlord of that person's right to acquire the freehold;

- (b) Any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
- (c) Deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) Making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) Any valuation of the house and premises."

9. Section 9 Act was further amended by the Commonhold and Leasehold Reform Act 2002 as follows :-

"4(A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a Leasehold Valuation Tribunal."

10. The Tribunal considered *Covent Garden Group Limited v Naiva* [1995] 1EGLR 243 which held that a fee for valuation carried out in connection with a reference to the Leasehold Valuation Tribunal is not recoverable.

11. APPLICANTS' SUBMISSIONS

The Applicants' submissions were helpfully summarised in Midland Valuations' letter of 19th May to the Tribunal and the Respondent as follows :-

- (a) As no valuations were carried out pursuant to the Notice of Claim and prior to the Application to the Tribunal (see dates in table at paragraph 3 of this decision) no valuation costs are payable.
- (b) Administrative costs are not recoverable under Section 9 (4).

12. RESPONDENTS' SUBMISSIONS

The Tribunal was satisfied that the Respondents had received written notice of the hearing and copies of the Applicants' submissions of 19th May. A telephone call was made by the Panel Office to Lichfield District Council on 6th June. The Panel Office was advised that the Respondents would not be attending the hearing and would "run with" the Tribunal's decision.

13. THE HEARING

Mr Moore for the Applicant produced a bundle of correspondence, confirming that the price payable had been agreed between the parties. He also produced a copy of a letter dated

14th November 2005 from the Respondent to Midland Valuations Limited which contained the following estimate of costs :-

"The District Valuer has also now confirmed that he is prepared to amend his reports so that the contribution towards his costs will be limited to £100.00 plus VAT per property. With regard to legal costs, Council's solicitors have informed me that their estimated costs for dealing with seven properties are between £1,500.00 and £2,000.00. That figure is exclusive of VAT and disbursements and has been given without them receiving instructions and therefore, not having seen the paperwork involved."

14. The Tribunal was told by Mr Moore that he did not seek to challenge the estimate of legal costs contained in the Respondents' letter of 14th November. He did however indicate that completion of the enfranchisement process was being delayed by the Respondents as they refused to proceed until the Applicants agreed to pay an additional sum of £150.00 by way of administrative costs. Mr Moore told the Tribunal that it was against that background that the costs application had been made.
15. The Tribunal considered a letter dated 1st June 2006 which the Panel Office received from the Respondents. The Respondents indicated that "It was agreed that the purchasers are to be responsible for the Council's reasonable legal costs, administrative fees and valuers fees in the transaction." The Respondents also refer to Midland Valuations' letter of 4th January 2006 (see paragraph 5 of the decision). The Respondents also produced a copy of their letter of 13th April 2006 to Midland Valuations Limited which indicated :- "I have now clarified the situation with the District Valuer. He has amended his report to indicate that the payment of administrative costs will be in accordance with the legislation under which the applications have been resolved."
16. Also enclosed with the Respondents' letter to the Tribunal of 1st June 2006 was a copy of the District Valuer's letter of 13th October 2005 addressed to the Respondent and marked "Report". This relates to 29 Gilbert Road only. However the Respondents' letter of 1st June indicates that similar letters were received in respect of the other properties, the subject of this determination. The Tribunal was unable to determine whether the District Valuer's letter of 13th October 2005 was the original report or the amended report referred to in the Respondents' letter of 13th April 2006 to Midland Valuations Limited.

17. The Tribunal noted that the District Valuer's report of 13th October 2005 was prepared "with reference to your request dated 15th August 2005." The Tribunal was satisfied that requests were made in relation to all seven properties. The Tribunal having considered the table set out at paragraph 3 of this decision, noted that the request for the valuation to be carried out was made after receipt of the Notice of Claim but before the Applications to the Leasehold Valuation Tribunal to determine price. The Tribunal accepted that in local Government delays of six weeks between request and valuation are not unusual.

18. The Tribunal also noted that the District Valuer's inspection was external only.

19. DECISION

The Tribunal having regard to the matters set out in paragraph 17 found as fact that the District Valuer's valuation of 5th October although carried out after the Application to the Leasehold Valuation Tribunal was a valuation in pursuance of the Notice and therefore recoverable under Section 9(4) and not a valuation in connection with the reference to a Leasehold Valuation Tribunal which would not be recoverable (see authority at paragraph 10 of this decision).

20. The Tribunal felt that the sum of £100.00 plus VAT was reasonable for an external valuation of a property of this sort under section 9(4)(e).

21. Using its knowledge and experience the Tribunal assessed the Respondents legal fees under Section 9(4)(b) – (d) at £285.00 plus VAT and disbursements per property.

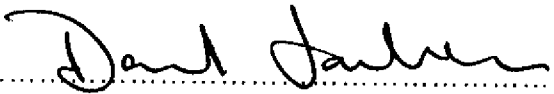
22. In the absence of any evidence or argument from the Respondents and particularly as no explanation had been forwarded by the Respondents as to exactly what work had been carried out under the heading of administrative costs, the Tribunal determined that "administrative costs" were not "of or incidental to any of the matters" as set out in section 9(4)".

23. DETERMINATION

The Tribunal determined that the Respondent is not entitled to administrative costs of £150.00 per property but is entitled to :-

- (a) legal costs of £285.00 plus VAT and disbursements per property
- (b) valuation fee £100.00 plus VAT per property.

24. In reaching its determination the Tribunal had regard to the submissions of the parties, the relevant law and their own knowledge and experience as an expert tribunal but not any special or secret knowledge.

Signed 

MR D JACKSON – Chairman

20 JUN 2005