

**UPPER TRIBUNAL (LANDS CHAMBER)**



**UT Neutral citation number: [2012] UKUT 131 (LC)  
UTLC Case Number: LRA/132/2011**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LEASEHOLD ENFRANCHISEMENT – costs – award of costs under section 9 of the Leasehold Reform Act 1967 – award of costs under rule 10 of The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE  
LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN REGION  
RENT ASSESSMENT PANEL**

**BETWEEN:**

**HOLICATER LIMITED**

**Appellant**

**and**

**GREAT YARMOUTH BOROUGH COUNCIL**

**Respondent**

**Re: Winners Sports Bar  
Monument Road  
Great Yarmouth  
Norfolk NR30 3QL**

**Determination on the basis of written representations**

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## DECISION

### Introduction

1. This is an appeal by way of review from the decision of the Leasehold Valuation Tribunal Eastern Region Rent Assessment Panel dated 22 August 2011 under section 175(2) of the Commonhold and Leasehold Reform Act 2002. Permission was granted by the President on 20 December 2011.
2. The Leasehold Valuation Tribunal (LVT) had originally convened on 8 February 2011 for the purpose of determining the price to be paid and other terms for the acquisition of the freehold of the premises known as Winners Sports Bar on South Beach Parade, Great Yarmouth. During the course of the hearing, Holicater Limited (the appellant) came to terms with the respondent to those proceedings, Great Yarmouth Borough Council.
3. There was no agreement between the parties with respect to costs and so directions were issued on 16 May 2011 for the parties to exchange submissions on quantum, merits and the tribunal's jurisdiction. The decision on those costs was promulgated on 22 August 2011. The LVT ordered that Holicater Limited pay £3,935 of a total claim for costs in the sum of £12,755 by Great Yarmouth Borough Council. The LVT thereby made a very substantial reduction in the costs claimed.
4. One part of the costs allowed were the costs of investigating Holicater's right to acquire the freehold pursuant to the provisions of section 9(4)(a) of the Leasehold Reform Act 1967. Included under that sub-heading were the costs of an advice dated 2 December 2009 and a short addendum note dated 18 February 2010.
5. As is clear from the face of the LVT's decision, these two advices did not relate to the investigation of Holicater's right to acquire the freehold but to the correct method of valuation. Holicater Limited contends that Great Yarmouth Borough Council should not, in the circumstances, have been given their costs of these two advices.
6. An application for permission to appeal that decision was refused by the LVT on 12 September 2011 on the basis that it was acknowledged that these costs had been placed in the wrong category in the decision and that the costs of the advice and the addendum ought to have been included in the valuation category.
7. The appellant contends that the LVT had effectively redrawn the claim made by Great Yarmouth Borough Council so that costs that would otherwise be irrecoverable became recoverable. The appellant contend that in so doing the LVT had removed the right of the appellant to make submissions as to the recoverability or reasonableness of those costs.

8. The President granted permission to appeal the decision on the basis that there is a realistic prospect of success on the ground that the LVT erred in its determination of that part of the costs relating to counsel's fees under section 9(4)(a) of the Leasehold Reform Act 1967. The appeal, confined to this issue, is by way of review and by way of written representations.

## **The Law**

9. Section 9 of the LRA 1967 sets out the provisions for the purchase price and the costs of enfranchisement, and tenant's right to withdraw. Section 9(4) provides as follows:

“Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (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) ...
- (c) ...
- (d) ...
- (e) any valuation of the house and premises;

but so that 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.”

## **The Decision**

10. The narrow point that is being appealed is that the LVT allowed Great Yarmouth Borough Council the costs of Counsel's advice dated 2 December 2009 and a short addendum dated 18 February 2010. This was stated in the Decision to be pursuant to section 94(a) under the heading “any investigation by the landlord of that person's right to acquire the freehold” even though the body of paragraph 21 provides that “Both [advices] focus on the correct method of valuation, which the tribunal accepts was a complex issue on which legal guidance was justified ...”

11. It was, therefore, clear from the face of the decision that the LVT had awarded this sum under the incorrect provision of section 9(4) of the LRA 1967 and if the sum were to be awarded then it ought to have been pursuant to section 9(4)(e) rather than 9(4)(a). From the papers before me, it appears that the LVT were led into this error by reason of the way in which Great Yarmouth Borough Council had put forward their submissions for costs.

12. It is understandable, therefore, that when the application for permission to appeal was lodged with the LVT, the LVT sought to remedy the obvious slip and place the costs of £1250 allowed for the two advices into the valuation section of the decision rather than the section dealing with investigating title.

13. In my judgment, it was plainly always the intention of the members of the LVT to award the costs of these advices on the basis that they were properly sought to ascertain the proper method of valuation and were nothing to do with investigating title.

14. I would not consider that there would be any difficulty with the LVT adopting such a course to amend an obvious slip unless, as is suggested here by the appellant, it could give rise to unfairness.

15. What the appellant contends is that as Great Yarmouth Borough Council included these advices as being part of the costs of investigating title under section 9(4)(a) of the LRA 1967, the appellant contested their entitlement to those costs on that basis: namely that the advices were sought after the admission had already been made that the appellant had a right to enfranchise. No submissions were made with respect to whether Great Yarmouth Borough Council should be entitled, as a matter of principle, to the costs of the advices with respect to the basis of valuation or the quantum of such costs. In the application for permission to appeal made to the Upper Chamber (Lands Tribunal) the appellant has set out, in summary form, the arguments it would have made against the award of such costs under the provisions of 9(4)(e) had it been given opportunity to do so.

16. While I do not criticise the LVT in their endeavours to correct, in the most efficient way, an obvious slip; such a correction has, in the circumstances of this particular case, brought about a potential unfairness to the appellant. Consequently, the appeal on this narrow point should be allowed. However, it would be wrong, in my judgment, to introduce an unfairness to Great Yarmouth Borough Council by simply finding that the costs of the advice and addendum are not recoverable because they were included under the wrong provision of section 9(4). It would be disproportionate to remit this back to the LVT for a rehearing and I will therefore deal with this narrow point on written submissions. I will give directions with respect to those written submissions at the end of this decision. and the sum awarded under heading "a. Investigation" in paragraph 26 should be reduced by half with respect to the solicitor's costs, that is to £425, and the figure allowed for Counsel should be removed. I have reduced the costs with respect to the solicitor by 5 hours as it seems to me that is an appropriate amount of time for the preparation of instructions and the consideration of those advices. The total figure awarded to the Great Yarmouth Borough Council is therefore reduced to **£2185**.

## Costs of this Appeal

17. The appellant contends that, if successful on the appeal, the appellant should be entitled to its costs as against Great Yarmouth Borough Council. The appellant has been successful in that I am overturning the finding of the LVT on this point, albeit that it is necessary to give the parties an opportunity to address the costs of the advice and the addendum advice.

18. Great Yarmouth Borough Council had objected to permission to appeal being granted by the letter from Norfolk Public Law dated 28 October 2011. By letter dated 20 January 2012, Norfolk Public Law wrote on behalf of Great Yarmouth Borough Council stating that they do not intend to play a part in the appeal process but that Great Yarmouth Borough Council supports the reasoning of the Leasehold Valuation Tribunal.

19. The application for permission to appeal was lodged on 24 September 2011 together with the application for permission to appeal fee of £200. The further sum of £250 was also due to be paid (refundable if permission was not granted). In fact, that further sum of £250 was paid after permission to appeal was granted by the President on 20 December 2011. It appears from the correspondence that it was not paid until 31 January 2012, sent under cover of a letter dated 24 January 2011.

20. The appellant has, therefore, paid £450 in fees in order to get this matter before the Lands Tribunal for determination and, as the successful party, sought an order for costs to cover those fees.

21. Rule 10 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 provides that the Tribunal may make an order for costs on an application or on its own initiative (rule 10(1)); that the Tribunal may order a party to pay to another party costs of an amount equal to the whole or part of any fee paid (which has not been remitted) in the proceedings by that other party that is not otherwise included in an award of costs (rule 10(6)) and

- (7) In an appeal against the decision of a leasehold valuation tribunal, the Tribunal may not make an order for costs except –
  - (a) under section 29(4) of the 2007 Act (wasted costs);
  - (b) under paragraph (6); or
  - (c) if the Tribunal considers that the party ordered to pay costs has acted unreasonably in bringing, defending or conducting the proceedings.

The amount that may be awarded under (7)(c), disregarding any amount that may be awarded under paragraph (6), must not exceed £500.

22. Under rule 1 of the 2010 Rules, a party includes a respondent and a respondent means:

- “(a) in an application for permission to appeal or in an appeal against a decision of a tribunal, any person other than the applicant or the appellant who was a party in the proceedings before that tribunal and who –
- (i) was present or represented at the hearing before that tribunal; or
  - (ii) where the proceedings were determined without a hearing, made representations in writing to that tribunal,

Unless the person has ceased to be a respondent under rule 25(2) (respondent’s notice).”

Rule 25(2) of the 2010 Rules provides that a respondent shall cease to be a respondent if no respondent’s notice is provided within 1 month of the date on which the Tribunal sent notice of giving permission to appeal (rule 25(3)). The respondent’s notice must be in writing and be signed and dated.

23. Great Yarmouth Borough Council did send a respondent’s notice by the letter dated 20 January 2012. The notification of permission to appeal was given on 21 December 2012 and in the letter dated 20 January 2012 Greater Yarmouth Borough Council stated that it did not consider that the appeal should be allowed and supported the reasoning of the LVT and thereby gave grounds relied upon in opposing the appeal, even though it did not intend to play a part in the appeal process.

24. In my judgment, Great Yarmouth Borough Council remained a respondent to the appeal and did not cease to be a respondent pursuant to the provisions of rule 25(2). In those circumstances an award of costs pursuant to rule 10(7) can be made. I award costs in the sum of £450 pursuant to the provisions of rule 10(7)(b) and 10(6), that is the fee paid in these appeal proceedings.

## **Conclusion**

25. For the reasons set out in detail above, this appeal is allowed.

26. In order to determine whether Great Yarmouth Borough Council is entitled to the costs of the advice dated 2 December 2009 and 18 February 2010, Great Yarmouth Borough Council must provide their written submissions in support together with copies of the advice and addendum by no later than 4pm on 18 May 2012 and Holicater Limited must provide its written submissions in response by no later than 4pm on 25 May 2012.

Dated 4 May 2012

Her Honour Judge Karen Walden-Smith