



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	: CHI/00MW/OC9/2018/0013
Property	: Osbourne Court, The Parade, Isle of Wight PO31 7QS
Applicant	: Castle Lane Securities Limited
Representative	: Knights plc
Respondent	: Osbourne Court Freehold Limited and the Participating Leaseholders
Representative	: KWW Solicitors
Type of Application	: Landlord's costs of leasehold enfranchisement
Tribunal Member(s)	: Mr D Banfield FRICS
Date of Decision	: 31 January 2019

DECISION

The Tribunal determines that the recoverable costs are assessed at;

- **Legal costs** **£3,223.55**
- **Valuer's fees** **£12,600.88**
- **Total** **£15,824.43**

Background

2. The Applicant seeks a determination as to the costs payable to the Respondent under Section 33(1) Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) following an abortive collective enfranchisement.
3. The costs sought are legal fees of £3,390.36 and valuation fees of £16,734.21.
4. The Tribunal made Directions on 18 July 2018 requiring each party to set out their positions and for the Applicant to prepare a hearing bundle.
5. The Tribunal indicated that the application would be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal. No objection has been received and the application is therefore determined on the papers.

The Law

S. 33 Costs of enfranchisement.

(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) 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 matters, namely—

(a) any investigation reasonably undertaken—

(i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or

(ii) of any other question arising out of that 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 or other property;

(e) any conveyance of any 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.

(2) For the purposes of subsection (1) 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 he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).

(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them

Evidence

Applicant

6. In their statement of legal and valuation costs case the Applicant confirms that they are the freehold owner of Osbourne Court comprising a 1930's block of some 58 flats let on long leases.
7. On 27 January 2017 the Respondents and other long-leasehold tenants gave Notice under section 11 of the 1993 Act for Osbourne Court Freeholds limited as nominee purchaser and other long leaseholders to acquire the freehold interest.
8. On 16 March 2017 the Applicant received Notice that save for the Respondents all other long-leaseholders who had given the Notice would no longer be participating in the claim.
9. On 21 March 2017 the landlord gave the First Respondent its without prejudice counter-notice.
10. The without prejudice nature of the Counter-Notices was on two grounds one of which was later abandoned.
11. By Order dated 25 April 2018 the County Court declared the Notice to be invalid and ordered the Respondent to pay the Applicant's agreed costs following which the Respondents' application was withdrawn and the Applicant's S.33 costs crystallised.

12. Details of legal costs were provided indicating a charge out rate of £295 ph for a Grade A fee earner.
13. Details of valuation costs were provided indicating a charge out rate of £200ph for Mr Gross and £75ph for his secretary.

Respondent

14. The Respondent's Statement in Reply made two detailed corrections to the applicant's Statement of Case and made individual challenges to a number of items in both the legal and valuation costs schedules all of which are set out in the attached appendix.
15. The charge out rates are not challenged but, with regard to the Valuation fees the general observation is made that "these costs globally are significantly in excess of what would be considered reasonable costs, in accordance with section 33, in a case such as this."
16. In summary, the Respondent challenges

Decision

17. The Tribunal's decision is set out in the attached schedule.
18. The total sums disallowed are Legal costs of £166.81 and Valuation fees of £4,133.33.
19. The Tribunal therefore determines that the recoverable costs are assessed at;
 - Legal costs £3,223.55
 - Valuer's fees £12,600.88
 - **Total £15,824.43**

D Banfield FRICS
31 January 2019

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not

complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the appeal is seeking.