FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KF/OCE/2019/0009**
Property	**:**	**25 Clifftown Parade, Southend, Essex, SS1 1DN**
Applicants	**:**	**Paul Fowkes & Barbara Fowkes**
Representative	**:**	**Tolhurst Fisher LLP (Solicitors)**
Respondents	**:**	**Julie John & Stephen John**
Representative	**:**	**Dewar Hogan (Solicitors)**
Type of application	**:**	**Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	**:**	**Tribunal Chair Mr N. Martindale FRICS** **Judge G. Sinclair** **Mr S. Moll MRICS**
Date of determination and venue	**:**	**4 July 2019 at 197 East Road, Cambridge CB1 1BA**
Date of decision	**:**	**5 July 2019**

DECISION

The section 33 costs determined by the Tribunal are £2,630 plus VAT, as applicable.

REASONS

Background

1. This is an application made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") in relation to the prospective enfranchisement of the Property. In their application dated 20 March 2019 the applicants sought determination of the premium, other sums payable, the landlords costs; and the terms of a transfer and lease back of the Property.

2. Directions dated 27 March 2019 were issued by Judge Edgington. These included requirements for the content and timing of submissions on the substantive matters of dispute, and dealt with S.33 costs. The application was listed for hearing on 4 July 2019.

3. On 1 July 2019 both parties confirmed to the Tribunal that all matters had been agreed between them, save for the amount of the Respondent's legal costs under S.33 of the LRHUDA 1993. The legal costs claimed were £5,649 (plus VAT) dealing with the notices and £1,400 for the transfer (plus VAT). Both parties also confirmed that they no longer required the remaining issues to be determined at a hearing, but rather on the papers received by the Tribunal, only.

Law

4. Section 33 is reproduced in the Appendix 1 to this decision. It deals with freehold purchases. Similar provisions are set out at Section 60 for costs arising in the case of lease extensions.

5. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision related to the purchase of a freehold. The costs incurred by the landlord of obtaining professional services, in responding to a claim must be reasonable and have been incurred in dealing with the Notice and any subsequent transfer. The same approach applies to lease extensions.

6. Those landlord costs incurred and arising from the claim for purchase of a freehold must be for the purposes listed at S.33 (1) (a - e) 1993 Act, and from the claim for extension of a lease the purposes listed at S.60 (1)(a - c). The tenant is also protected either by section S.33(2) or S.60(2). Both sub-sections effectively limit recoverable costs to those that the

landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

7. In effect, this introduces what was described in Drax as a "(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis." It is also the case, as confirmed by Drax, that the landlord should only receive its costs where it has explained and substantiated them. Furthermore when a court is determining costs, and where there is any doubt, the benefit should be resolved in favour of the paying party, CPR44.3 (2)(b).

8. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what S.33 or S.60 says, nor is *Drax* an authority for that proposition. Both sections are self-contained.

Respondents' Case

9. The respondent set out as part of the bundle at pages 160 and 161 a schedule of their claim to S.33 costs. These were divided into three sections: 1) legal costs of dealing with the notice and counter notice; 2) valuation costs and other disbursements arising; and 3) legal costs of the transfer of title (anticipated). However prior to the hearing date both parties confirmed that they had also settled the costs under part 2) leaving the legal costs at 1) and 3) to be determined.

10. According to the schedule, only individuals at partner level (grade A) were engaged in the time charge work at either £400/hr (Mr Cox) for the most senior, or otherwise at £350/hr (Mrs Purohit or Mrs Winning). Most of the work was undertaken and charged at the lower of these two rates. Work under part 1) was divided into that with the client; with the valuer; or with the documents. The client and valuer related work was further subdivided into; routine sending/receipt of emails; timed telephone calls; sending/receipt of longer emails and letters. Although the dates of work were provided. Work to be undertaken under part 3) was not broken down other than 4 hours at £350/hr as an estimate.

11. The Tribunal did not receive a copy of any counter representations from the respondent, to applicants' objections set out below. The schedule showed very little detail of the content of much of this work and time spent.

Applicants' Case

12. The applicants provided a 10 point '*schedule of objections to the costs claimed by the respondent'*. There was a brief comment where relevant and a suggested time period and/or cost figure that would be acceptable.

13. 1. The respondents had failed to comply with the directions by not supplying the qualifications and experience of each fee earner. However they did not question the range of hourly rates of the grade of individual said to have carried out the work.

14. 2. The respondents were attempting to charge for the reading of emails received which was said to be contrary to CPR 47. They suggested that NIL was therefore due.

15. 3. The respondents were charging for timed telephone calls when really the detailed written instructions would have already been sent out. In the absence of any back up evidence as to what these calls were for, they suggested that 18 minutes was reasonable.

16. 4. The respondents were charging for longer emails and letters between 18 October 2018 and 14 December 2018 the total cost of such for this period being £910 but, gave no detail, contrary to Tribunal Direction 1(c). They questioned the need for such correspondence given that it was being undertaken by grade A solicitors and the work simply concerned the transfer of a freehold subject to two leases, each over 80 years unexpired and the subject of a new leaseback of third flat. They did not suggest a substitute time period or figure.

17. 5. The applicants questioned the recharge of time spent reading received emails as point 2 above for the same reason. They suggested that NIL was therefore due.

18. 6. The applicants questioned the time of 30 minutes or £175, spent by the solicitor discussing the application with the valuer again given the lack of any supporting evidence. They suggested that £35 was due.

19. 7. The applicants questioned the time spent by the solicitor writing to the valuer about the Property, other than sending instructions to value it and the details of the applicants' valuer again given the lack of any supporting evidence. They suggested that £70 was due.

20. 8. The applicants questioned the time spent by the solicitor in investigating the notice and the tenants titles of 3hr 36mins or £1315. The work also appeared to have been undertaken twice by different solicitors but, both were charged for. They also disputed that the time spent on *"…reviewing the documentation to consider the roof/ air space is a valuation issue and therefore not part of the recoverable costs for carrying out an investigation into the specified premises or the Property being liable to acquisition in pursuance of the initial notice."* Such costs should have been included in the valuation fee. They suggested that 1hr 30mins, totalling £525, was due.

21. 9. The applicants questioned whether the solicitors needed to address the valuer's report at all, as it was only a matter for their clients. They stated that 24 minutes at £140 was not justified at all. They suggested NIL was due.

22. 10. The applicants disputed the estimated 4 hours for the conveyance. They had drafted the transfer and long leaseback of flat 3, the respondents had not requested any alterations, so none could now be made. For preparation and completion of the transfer the applicant suggested 1hr 30mins, some £525 was anticipated and thus due.

Decision and Reasons

23. The Tribunal found that the applicants' case did not dispute the grade of solicitor employed by the respondent, nor the hourly rates charged, but that its costs challenges were generally successful for one or more of the following five reasons: 1) A failure to supply adequate detail in support of items of work and times claimed, contrary to Directions; 2) The duplication of some time charged work; 3) The charging for work not falling within S.33 of the Act; 4) The charging for work contrary to CPR47 and that whilst the Tribunal was not bound by such, was able to take into account when assessing costs payable. Similarly charging for work where the nature and extent of the work is unclear despite the invitation of the Tribunal for the Respondent to make counter representations and mindful of guidance from CPR44 the Tribunal gives the benefit of any uncertainty to the payee, in this case, to the applicant.

24. The Tribunal considered the case of *Sidewalk Properties Ltd v Twinn* [2015] UKUT 0122 (LC). Among other matters it distinguished between professional and administrative costs. The Act at S.33 or S.60, only allows the landlord to claim for the cost of *professional* services but not for administrative task. At paras 36-38 Martin Rodger QC wrote:

> *36. I agree with the appellant that the task of instructing a surveyor is incidental to a valuation. Nevertheless in a case such as this it is an administrative rather than a professional task which no doubt relies on the use of standard instructions given to a surveyor who is very familiar with the requirements of statutory valuations under the 1993 Act. A client would not expect to be charged an additional fee for such tasks, the expense of which is subsumed instead in the fee payable to the solicitor.*
> *37. I also accept that considering the valuation report of the surveyor is a task incidental to the valuation itself. Moreover, it is not an administrative task and it is legitimate, in my opinion, for the client to expect the solicitor to consider the valuation and to be satisfied that it is in accordance with the basis of valuation required by the Act. I can see no reason why a client should not reasonably and willingly expect to pay for that task to be undertaken, even where he is liable to meet the cost personally.*

38. In a case in which an experienced surveyor is engaged to provide a valuation of a very modest property the work involved in considering and advising on the report ought not to be particularly time consuming. In this case it is said to have taken 12 minutes to advise on a single report and take instructions, which seems reasonable."

25. As the schedule of costs submitted by the landlord did not contain any item numbering, the sums determined are by reference to the item heading and figure claimed. By each is set out the sum allowed, as follows:

Bundle p.160 - p.161
Work on the Notice and Counter Notice
Attendance on Client:
Routine emails sent: (Claimed £35, £105). Determined at £140 as claimed.
Routine emails received: (Claimed £280). Determined at NIL, per CPR 47.
Timed telephone attendances: (Claimed £120, £210, £105, £105). Determined at £150, excessive time spent.
Longer letters and emails: (Claimed £105, 70; £280, 140, 280, 140, 140, 70, 140, 70, 105, 70). Determined at £450, excessive time spent.

Attendance on Valuer:
Routine emails sent: (Claimed £70). Determined at £70.
Routine emails received: (Claimed £17.5, £105). Determined at NIL, per CPR 47.
Timed telephone attendances: (Claimed £70, 105). Determined at £35, excessive time spent.
Longer letters and emails: (Claimed £105, 70, 70, 70). Determined at £70 excessive time spent)

Work on documents:
Work on documents: (Claimed £40, £400, £525, £350, £140). Determined at £1015. First two items are duplicated by some of those following.

Sub-Total allowed above £1930 + VAT.

Disbursements including Valuers cost – The parties had agreed a figure.

Work on the Conveyance:
Work on conveyance: (Claimed £1,400). Determined at £700. The Applicant prepared the conveyance for transfer of freehold and grant of leaseback. No objections to the form and content appear to have been made.

Legal costs allowed: £2,630 plus VAT.

Name: Neil Martindale Date: July 2019

Appendix 1

Leasehold Reform, Housing and Urban Development Act 1993

S33.— 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 [the appropriate tribunal] 1 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.

Appendix 2 – Rights of Appeal

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.