FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/0C9/2019/0123**
Property	**:**	**The Chronos Building, 21 Mile End Road, London E1 4TL ("the Chronos Building")**
Applicant	**:**	**21 Mile End Road Freehold Limited ("the tenant")**
Representatives	**:**	**ODT Solicitors**
Respondent:	**:**	**Long Term Reversions (Torquay) Limited ("the landlord")**
Representatives	**:**	**Pier Management Limited**
Type of application	**:**	**A determination of reasonable costs under Sections 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Judge Angus Andrew** **Ian Holdsworth MRICS, MCIArb** **Mary Hardman FRICS, IRRV(Hons)**
Date and venue of hearing	**:**	**20 November 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**11 December 2019**

DECISION

Decision

1. Pursuant to section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 the following statutory costs are payable by the tenant to the landlord:

    a. Valuation costs of £8,650 plus VAT; and

    b. Legal costs of £8,250 plus VAT; and

    c. Disbursements of £106.25 including VAT.

The application and hearing

2. By its application received on 20 May 2019 the tenant sought a determination under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") of the landlords' statutory costs incurred in the tenant's collective enfranchisement claim.

3. Directions were issued by the tribunal on 11 September 2019 that required the landlords to prepare *"a schedule of costs sufficient for summary assessment"*.

4. At the hearing on 20 November 2019 the tenant was represented by Mr El Hasan and Mr Kit Chong. Both Mr El Hasan and Mr Chong are directors of the tenant and they spoke to a statement of case prepared by ODT Solicitors. The landlord was represented by Jemma Cox and Colin Horton. Ms Cox is an in-house solicitor with Pier Management Limited whilst Mr Horton is a valuer with Hortons Valuers. With the agreement of both Mr El Hasan and Ms Cox we looked at the Chronos Building on Google Earth.

Background

5. The Chronos Building was built in 2000 and is a five-storey mixed use building comprising a ground floor residential car park, retail units on the ground floor and 29 two-bedroom flats on the three upper floors. All the flats have been sold on long residential leases in substantially the same form. We understand that the commercial units have also been sold on long leases. We were told that the Chronos building won several architectural awards including the Guardian Housing Award in 2000. It is in a conservation area and close to a number of listed buildings including the Albion Brewery Engineer's Residence and the Trinity Green Arms Houses and Chapel.

6. The Chronos Building is one of three adjacent detached buildings that were all built at the same time although the other two buildings are purely residential. We were told that the residential lessees of all three buildings hold shares in the tenant and that each building was the subject of a separate enfranchisement claim. Included in the title to the Chronos Building is a drive

that provides access to both the basement car park and the other two buildings. The basement car park is divided into a number of delineated car parking spaces with access lanes running between them. The car parking spaces are demised with flats situated in all three buildings although it is apparent that only a limited number of the flats have the benefit of a parking space.

7. The tenant's freehold claim notice was given on 9 January 2019 and proposed a total premium of £267,663. After receiving the claim notice the landlord gave notice requiring the tenant to deduce title. In response the tenant within the required 21 days provided official copy entries of all the relevant titles.

8. The landlord's counter-notice admitting the claim was given on 15 March 2019 and proposed a total premium of £1,245,247. The counter-notice was given "without prejudice" to the landlord's contention that the tenant was not entitled to acquire the freehold reversion because the non-residential and non-communal parts of the Chronos Building exceeded 25% of the internal floor area.

9. In evidence Mr Horton told us that he had included in the non-residential and non-communal parts, the lanes running between the delineated parking spaces in the basement. However, even with the inclusion of those lanes the non-residential and non-communal parts only increased from 20% to 23% of the internal floor area. The landlord abandoned its contention *"soon"* after it sent its without prejudice counter-notice.

10. Although the valuations were not before us we were told that the landlord's valuation included a substantial premium for the possible development of The Chronos Building by adding an additional floor. Mr Horton told us that he had carried out a full development appraisal but that when he went to the planning department he was told that the proposed development was *"too risky"*.

11. The premium was eventually agreed at £405,000, which is self-evidently far closer to the tenant's proposed premium than the landlord's. Mr Horton told us that the agreed premium was achieved by a process of negotiation but it is self-evident that the landlord effectively abandoned its claim to development value.

The parties' proposed costs

12. The landlord prepared the directed schedule of costs but the most helpful summary is that contained in the tenant's statement of case prepared by its solicitor. That statement contains a number of arithmetical errors (as indeed does the landlord's own schedule of costs). The corrected schedule (net of VAT) is reproduced on the following page: -

Date	Activity	Landlord's claimed costs	Tenant's offered costs
19 February 2019	Valuation costs	15,000.00	2,175.00
	Official copies	451.20	100.00
	Special delivery fee	6.25	6.25
14 January 2019 – 18 March 2019	Work in relation to the service of the counter-notice	14,754.00	3,920.00
28 March 2019 – 27 August 2019	Work in relation to section 14 notices and the conveyancing	526.00	526.00
Anticipated costs	Work in relation to the conveyancing	920.00	920.00
Total		**£31,657.45**	**£7,647.25**

13. Mr Horton told us the valuation costs were assessed on a "sliding scale" with £1,000 for each of the first 2 flats reducing to £250 for each of the last 10 flats. In addition, £4,000 was charged for what Mr Horton described as a *"full development appraisal"*. Mr Horton explained that he had charged £250 an hour for the development appraisal so that he must have spent 16 hours on that work.

14. Turning to the legal costs all the work after 18 March 2019 was or will be completed by a grade A fee earner with an hourly charging rate of £280. That cost is not in dispute and we say no more about it.

15. Of the work up to 18 March 2019 4 hours was spent by a paralegal with an hourly charging rate of £125. This time was spent in *the "preparation of files of documentation pertaining to the block to enable validity check to be carried out"*. The rest of the time that must logically amount to some 62 hours was spent by Ms Cox, a grade B fee earner with an hourly charging rate of £230. Sensibly no objection was taken to the hourly charging rates.

16. The tenant's offered costs were largely based on the fees charged by its own valuers and solicitors both of whom are recognised specialist enfranchisement practitioners.

Statutory framework

17. The tenant's liability for payment of the landlords' costs is governed by section 33 of the Act. The relevant provisions are as follows:

> **33. – Cost 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 purpose 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.*

Reasons for our decision

18. Before turning to the specific costs, we make three preliminary points. The first relates to the time spent by the landlords' professional team that was at the heart of this dispute. In assessing a reasonable time to undertake the tasks identified in sections 33(1) we have regard to our considerable experience both as specialist practitioners and more recently as members of this expert tribunal: we can do no other.

19. The second relates to the basis of our assessment. We remind ourselves that we are not assessing costs on either the standard basis or the indemnity basis. The landlords' costs must nevertheless be reasonable and this has been described by a High Court cost judge as a limited test of proportionality.

20. Thirdly this tribunal has neither the expertise nor the resources to conduct a detailed assessment. We can only asses the costs in the round.

Valuation costs

21. It is apparent that the landlord has very high expectations of its professional team. As Mr Horton explained the landlord expects him *"to consider all the angles"* and to *"maximise the potential"* premium. Any landlord is entitled to adopt that approach but it does not follow that a landlord is entitled to recover the cost of excessive time spent in investigating remote possibilities. In the context of this case we are satisfied that the attempts to exclude the Chronos Building on the grounds of its commercial content and to obtain substantial development value were both remote possibilities.

22. We are also concerned by Mr Horton's evidence that he spent *"hours examining case law on what could or couldn't be included"*. That work also seems to have been replicated by Ms Cox. In the context of an enfranchisement claim legal research is not the proper task of the valuer. The valuer should work from a brief given by the solicitor and if the valuer requires legal clarification it is the solicitor or barrister who should provide appropriate guidance.

23. It is well established, if counter-intuitive, that the paying party's own costs are not an adequate comparator when assessing the costs of the receiving party. That said the disparity in the fees charged by the two professional teams is striking and we understand why the tenant considered it necessary to make the application now before us.

24. As far as the basic valuation is concerned we agree that it should be assessed by reference to a standard fee rather than by time spent. In this case a standard fee of £250 per flat is both reasonable and proportionate and we allow £7,250 Plus VAT for the basic valuation.

25. We agree that it was reasonable for Mr Horton to consider development potential and to make some exploratory enquires although having made those enquiries a full development appraisal was not appropriate. We allow 7 hours for that work. Mr Horton's hourly rate of £250 is excessive for a valuer's time and we allow only £200. We therefore allow £1,400 plus VAT for this work and £8,650 plus VAT in total for the valuer's costs.

Legal costs

26. We have similar reservations about the legal costs. Apart from the conveyancing work nearly all the work was undertaken by Ms Cox an experienced enfranchisement solicitor. When we asked why the task of checking all the leases had not been delegated to her para-legal she told us that

the landlord required her to go through "*every single detail including checking every lease*".

27. Again, a landlord is perfectly entitled to specify the level of service that it expects from its professional team but it does not follow that the time spent will have been reasonably undertaken or the costs reasonably incurred within the meaning of section 33.

28. Whilst we would expect Ms Cox to read one lease the remainder of the leases could reasonably have been checked by her paralegal, who would then provide an exception report for further consideration by Ms Cox.

29. Equally it is apparent that substantial time was spent by Ms Cox in considering and researching what we have already described as remote possibilities and also in discussing those possibilities with the valuer at considerable length both in person and in writing. We have already commented on the duplication of work by Ms Cox and Mr Horton.

30. Having regard to the language of section 33 and the requirement that any investigation must be *"reasonably undertaken"* and the costs *"reasonable"* in amount we are satisfied that the legal costs were not reasonably incurred. We allow 20 hours of a paralegal's time at £125 and 25 hours of Ms Cox's time at £230 hours. Thus, we allow £8,250 plus VAT

31. Turning to the cost of the official copy entries Ms Cox's explanation for ordering a complete set of official copies, when she had already requested the tenant to deduce title, was that the tenant had 21 days to comply and she wanted to get on with the work. With respect to Ms Cox she cannot have it both ways. Having put the tenant to the cost of obtaining the official copy entries she cannot then get them herself and recover the cost from the tenant. We allow the £100 rather generously offered by the tenant. In summary we allow total disbursements of £106.25 including the agreed special delivery fee.

Name: Angus Andrew **Date: 11 December 2019**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).