



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

Case reference : **CAM/26UG/OCE/2020/0007**

HMCTS code (paper, video, audio) : **P:PAPERREMOTE**

Property : **25 and 27 Gilpin Green, Harpenden, Hertfordshire AL5 5NP**

Applicants : **1. Visitacion Beale
2. Elizabeth Samantha Beale
(together, the “nominee purchaser”)**

Representatives : **Thirsk Winton LLP**

Respondents: : **1. David Simmonds Franks
2. Patricia Helen Franks
3. Alexandra Goodhand-Tait
(together, the “landlords”)**

Representatives : **Curry Popeck**

Type of application : **A determination of reasonable costs under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal member : **Judge David Wyatt**

Date of Decision : **14 August 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote decision on the papers which the parties are taken to have consented to. The form of remote decision was P:PAPERREMOTE. A hearing was not held because it was not necessary; all issues could be determined on paper. The documents for this determination are in the correspondence file and a bundle of 11 pages, the contents of which I have noted.

Decision

1. Pursuant to section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993, statutory costs of £1,880 plus VAT are payable by the nominee purchaser to the landlords, in addition to the valuation costs of £1,250 plus VAT already agreed by the parties.

The application

2. By its application dated 4 March 2020, the nominee purchaser sought a determination of the landlords' statutory costs under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "Act") incurred in respect of the notice given by the nominee purchaser under section 13 of the Act claiming the right to collective enfranchisement of the Property.
3. Directions were issued by the tribunal on 20 April 2020, requiring the landlords to prepare a schedule of costs sufficient for summary assessment. This schedule has been reproduced in summary form as an annex to this decision, with my determination of each item.
4. Pursuant to the directions, the nominee purchaser made submissions on the schedule of costs and the landlords' representatives made answering submissions. I have considered those written representations and the reasons for the determinations I have made are given below.

Statutory framework

5. The liability of the nominee purchaser 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.

...

(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 incurs in connection with the proceedings.

Basis of assessment

6. Accordingly, I am not assessing costs on the standard basis or the indemnity basis. The landlords' costs must nevertheless be reasonable, as set out above.

Valuation costs

7. The landlords claimed the valuation fees of John Whiteman & Co chartered surveyors in the sum of £1,250 plus VAT. These were agreed by the nominee purchaser.

Legal costs

8. The dispute was about the legal costs. The rate of £200 for Mr Valente, a grade A fee earner at a firm in Harrow, was not disputed.
9. The nominee purchaser said (in essence) that the landlords were wrongly seeking to claim costs of the tribunal proceedings and that the time claimed for certain other items was excessive, as set out in more detail in their submissions and examined below.
10. In their answering submissions, the landlords said (in essence) that the costs of the proceedings had been incurred because of the conduct of the nominee purchaser. They said that the premium had been agreed and the documents had been submitted back in October 2019 but had not been "considered" by the nominee purchaser until June 2020. Accordingly, they asked the tribunal to exercise its "discretion" to award full costs against the nominee purchaser. They also made representations about the individual cost items, as examined below.
11. As to the costs of the proceedings, this is solely an application for determination of liability for costs under section 33(1) of the Act. In a case of this type, the

tribunal has very limited powers to make any order for costs, as set out in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The landlords have not made an application under rule 13.

12. If the landlords wish to make an application for costs under rule 13, they must do so within 28 days of the date this decision is sent to them and the tribunal would then give directions. If the landlords intend to allege that the nominee purchaser has acted unreasonably in bringing or conducting the proceedings, they should bear in mind that this is a high bar - reference should be made to Willow Court Management Company 1985 Ltd v Alexander [2016] UKUT 0290 (LC). To enable the tribunal to deal with such an application fairly and justly, I expect that the landlords would be required to produce a chronology and a full bundle of all the relevant documents and correspondence, and the nominee purchaser would be given an opportunity to respond before the tribunal then considered such an application.
13. For the purposes of the application I have been asked to determine, the costs of the proceedings are outside the scope of section 33(1) of the Act, as explained above. The landlords' cost schedule is examined below on this basis.
14. All attendances on parties or others were claimed at £200 per hour, with 2:30 hours described as attendances on the Applicant (but apparently meaning the landlords), 1:30 hours for attendances on opponents and 0:12 hours for attendance on others. The nominee purchaser queried the 2:30 hours as excessive (although they seem to have been confused by the apparently mistaken reference to the Applicant rather than the landlords) and said that at least five units of the attendances on opponents and others must have related to the proceedings. They argued in effect that the total attendances should be reduced to 2:30 hours. The landlords' representatives responded that the time was recorded accurately and was not excessive, referring to the need to have regard to the landlords' entire estate rather than one unit and in isolation. I do not doubt that the landlords' representatives spent the time recorded but, on the information provided and taking into account the amounts allowed for the following items, the total cost it would be reasonable to pay for attendances in relation to the matters recoverable under section 33(1) of the Act would be 35 units at £20 each (3:30 hours), the sum of £700.
15. Item 1 in the schedule of work done on documents is one hour at £200 for perusal of the section 13 notice. The nominee purchaser says this is excessive and a reasonable time would be 0:36 hours. I disagree; taking into account the representations from the landlords' representatives about the need to consider the title at the same time, I allow the cost of £200 as claimed.
16. Item 2 is 3:48 hours at £200 per hour for research and drafting the counter notice. The nominee purchaser contends this is excessive and that a reasonable time would be 1:30 hours. The landlords' representatives refer again to the need to consider the title and the whole estate, adding that the counternotice incorporated provisions for a draft transfer. On the information provided and taking into account the time allowed for item 1, I assess the reasonable cost as 30 units at £20 each (3 hours), the sum of £600.

17. Item 3 is one unit (6 minutes) at £200 per hour in relation to the valuation. This does not appear to be disputed by the nominee purchaser and I assess it as reasonable.
18. Items 4 and 5 are 0:48 hours for reviewing title documents and lease perusal, and 1:24 hours for preparation of the TP1, all at £200 per hour. The nominee purchaser contends this is excessive and the total reasonable cost would be 1:18 hours. In answer, the landlords’ representatives refer to communications and the landlords’ requirements. In items 1 and 2, I have already allowed time for work on investigating the title and preparation of the first draft transfer deed, based on the submissions from the landlords’ representatives. However, it appears that this further work was necessary to review and finalise the transfer deed after the nominee purchaser responded. On the information provided, I assess the reasonable cost as six units (0:36 hours) for item 4, and 12 units (1:12 hours) for item 5, the total sum of £360.
19. Items 6, 8 and 9 (as set out in the annexed schedule) are all plainly costs in connection with the proceedings and section 33(1) of the Act does not make the nominee purchaser liable for them. Item 7 is described only as “*General work reviewing file and documents*” for 0:12 hours at £200 per hour, but the items in the schedule of work done on documents appear to be in chronological order. On the information provided, it is more likely that this was a cost in connection with the proceedings. Accordingly, section 33(1) does not make the nominee purchaser liable for it.

Total costs

20. For the reasons set out above, I allow statutory costs of £1,880 plus VAT, in addition to the valuation surveyor’s fees of £1,250 plus VAT already agreed by the parties.

Name: Judge David Wyatt **Date:** 14 August 2020

Annex – Costs Schedule

| Item | Description | Cost (£) | Offer (£) | Determination (£) |
|-------------|--|-----------------|------------------|--------------------------|
| Initial | Attendances | 840 | 500 | 700 |
| 1 | Perusal and consideration of section 13 notice | 200 | 120 | 200 |
| 2 | Research and drafting counter notice | 760 | 300 | 600 |
| 3 | Valuation | 20 | NA | 20 |

| | | | | |
|--------------|--|----------|-----|--------------|
| 4 | Title documents, lease perusal | 160 | 260 | 120 |
| 5 | Preparation of TP1 | 280 | | 240 |
| 6 | First-tier Tribunal documents and directions | 180 | Nil | Nil |
| 7 | General work reviewing file and documents | 40 | NA | Nil |
| 8 | Reviewing direction re costs | 137.50 | Nil | Nil |
| 9 | Preparation of statement of costs | 1,012.50 | Nil | Nil |
| Total | | | | 1,880 |

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).