



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

**HMCTS CODE** : **PAPER REMOTE**

**Case reference** : **LON/00BE/OCE/2019/0233**

**Property** : **22 Underhill Road London SE22 0AH**

**Applicant** : **Timothy Frank Aitchison, Howard  
Davis, Stephanie Winterhagen, Mauro  
Lelli, Louis Josef Hems**

**Representative** : **Tolhurst Fisher solicitors**

**Respondent** : **House of Mayfair Limited**

**Representative** : **Thirsk Winton LLP**

**Type of application** : **An application under Section 91(2) (d) of  
the Leasehold Reform, Housing and  
Urban Development Act 1993 for a  
determination as to costs to be paid under  
Section 33(1) of the Act**

**Tribunal members** : **Valuer Chairman D Jagger MRICS**

**Date of  
determination** : **26th August 2020**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was :PAPER REMOTE. A face-to-face hearing was not held because no-one requested the same, or it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 20 pages, the contents of which I have noted.

## **Background**

1. This is an application made by the applicant leaseholders pursuant to the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the reasonable costs to be paid under the provisions of sections 91(2)(d) and 30(1) of the Act in respect of the collective enfranchisement at 22 Underhill Road London SE22 0AH (the “property”).
2. The application is dated 25<sup>th</sup> November 2019 and directions were dated 23<sup>rd</sup> August 2020. which is evidently incorrect.
3. I have before me the following documents which would appear to be relevant:
4. There is a detailed Schedule of Costs dated 8 July 2020 prepared by the solicitors who acted for the respondents. This costs summary, prepared by Thirsk Winton Solicitors LLP, shows a total sum claimed £6,170 including VAT. This figure can be broken down to include the surveyors fees of Richard Clarke at £2700 including VAT, solicitors fees of £3456 including VAT and finally £15 disbursements. Jason Winton is a Grade A fee earner and his hourly charging rate is £300 per hour.
5. I have a Schedule of Objections from, Tolhurst Fisher solicitors for the applicants dated 15 July 2020 which in summary does not dispute the surveyors fee, but disputes the solicitors fees and considers a reasonable total fee would be £2700 inclusive of VAT which produces a total of £5,415 inclusive of VAT for the reasons stated.
6. I have responses from both applicant and respondents dated 22 July 2020 and 14 August 2020 respectively. The applicants reply further amends the solicitors fees to £1950 exclusive of VAT but keeps to the previous total of £5,415 which appears to be a mathematical error. Finally I have a letter dated 18 August 2020 on behalf of Thirsk Winton LLP which requests the Tribunal to disregard the Applicants reply to the Respondent which was not in compliance of the Directions.
7. In brief, the applicants representatives contend that the time claimed by the respondents solicitors is excessive and some of the costs are not recoverable under section 33(1) He also referred to the respondents email of the 8 July 2020 which set out solicitors fees of £2700 inclusive of VAT. In essence the two parties are £630 apart exclusive of VAT for solicitors fees in the matter.
8. The provisions of s33 of the Act are set out below and have been borne in mind by me in reaching this decision.

## **The tribunal's determination**

The Tribunal determines that legal costs of £2,490 plus VAT are payable under section 33(1)

## **Reasons for the tribunal's determination**

9. The applicant is only liable to pay 'reasonable' costs under section 33(1). The respondent's costs will only be regarded as reasonable 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 (section 33(2))
10. The Tribunal allows Mr Wintons charging rate of £300 per hour which is considered reasonable for a Grade A fee earner and was not challenged by the applicants.
11. The Tribunal focused on the time claimed by Thirsk Winton. Their costs of £2880 plus VAT equate to 9.6 hours at £300 per hour. Based on the Tribunal's knowledge and experience, this is slightly excessive and unreasonable. The Tribunal has no doubt that the respondents would not have incurred costs at this level, had they been personally liable to pay.
12. The level of client correspondence is considered excessive and an appropriate number of units would be 20. There is no consideration of a lease to take into account. The time spent on preparing the counter notice seems on the high side. The counter notice is not unique, containing as it does some fairly standard wording. I consider that this document, in the hands of a Grade A solicitor should not have taken more than 45 minutes to complete, say 7 units thus two thirds the amount claimed. This reduces the total units to 83 which equates to £2490 plus VAT
13. The fee for the surveyor is not in dispute and is agreed at £2,700 inclusive of VAT. The disbursement of £15 is not in dispute.
14. To summarise therefore I find that following fees and disbursements are payable by the respondent
  - Solicitors fees of £2,490
  - Vat thereon of £498
  - Surveyors fee of £2,700 inclusive

- Disbursements of £15 00

19. Accordingly, I find that the costs payable under the provisions of the Act (s91(2)(d) and 33(1)) are £5,703 inclusive of VAT and any disbursements

**Name:** Valuer Chairman D  
Jagger

**Date:** 26th August 2020

### **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).

#### **The relevant law**

##### **Section 33(1)**

##### **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.