



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

Case Reference : CHI/21UC/OC9/2021/0018

Property : Rusper House, Michel Grove, Eastbourne, East Sussex, BN21 1LB

Applicant : Michel Grove Properties Limited

Representative : Wallace LLP

Respondent : Rusper House Freehold Company limited

Representative : Stephen Rimmer Solicitors

Type of Application : Landlord's costs Leasehold Enfranchisement – section 33(1) Leasehold Reform, Housing & Urban Development Act 1993

Tribunal Members : Judge N Jutton

Date of Decision : 14 April 2022

DECISION

1 **Background**

- On 8 August 2018 the lessees of 8 residential flats at Ruser House, Michel Grove, Eastbourne, BN21 1LB (the Property) served Notice pursuant to section 13 of the Leasehold Reform, Housing & Urban Development Act 1993 (the Act) seeking to acquire the freehold interest in the Property from Michel Grove Properties Limited on the terms set out in the Notice. The Notice provided that for the purposes of section 15 of the Act the nominee purchaser would be the Respondent to this application, Ruser House Freehold Company Limited. The Notice required a response by 28 October 2018. The Notice was signed by the Respondent's Solicitors on behalf of each of the lessees.
- On 18 October 2018 the Applicant's Solicitors served on the Respondent by courier and by fax c/o the Respondent's Solicitors, a counter-Notice pursuant to section 21 of the Act. The counter-Notice admitted that the lessees (the Participating Tenants) were entitled to exercise the right to collective enfranchisement as provided for in the Act. The counter-Notice disputed certain terms of the proposed enfranchisement and made counter proposals. The Notice was accompanied by a letter from the Applicant's Solicitors which stated that the counter-Notice was served without prejudice to the Applicant's contention that the initial Notice was invalid and of no effect. Attached to the counter-Notice was a draft form of Transfer on Land Registry Form TP1.
- The Respondent subsequently made an application to this Tribunal seeking a determination of the terms of the proposed acquisition of the freehold interest in the Property. It is understood that application was struck out by the Tribunal.
- The Applicant seeks to recover its costs from the Respondent pursuant to section 33 of the Act. The Respondent does not dispute that the Applicant is entitled to recover its reasonable costs but disputes the amount.
- On 15 December 2021 the Applicant submitted an application to this Tribunal pursuant to section 91(2)(d) of the Act for a determination as to the amount of costs to be paid by the Respondent to the Applicant pursuant to section 33 of the Act.
- The Tribunal has before it a bundle of documents running to some 106 pages which contains the Claim Notice dated 8 August 2018, the counter-Notice dated 18 October 2018, the application to this Tribunal dated 15 December 2021, Directions made by the Tribunal, the Applicant's Statement of Costs and Disbursements in a form of spreadsheet with the Respondent's comments endorsed thereon and the Applicant's points in reply. There is also in the bundle a form of reply from the Applicant to the Respondent's comments dated 29 March 2022 and HM Land Registry Official Copy Entries of the freehold title of the Property and the leasehold title of each flat at the Property. References in this Decision to page numbers are references to page numbers in that bundle.

- 7 Directions were made by the Tribunal on 9 February 2022 for the service of Statements of Case and for the preparation of a bundle. The Directions provided 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 within 28 days of receipt of the Directions. No objection has been received by the Tribunal and therefore the Tribunal has proceeded to determine the application on the papers without a hearing.
- 8 The Tribunal made a further Direction on 23 March 2022 in response to an application made by the Applicant allowing the Applicant to serve a brief reply to the Respondent's case.
- 9 The application dated 15 December 2021 states that the amount of costs in dispute are as follows:
- | | | |
|----|--|-----------|
| a. | Legal costs including VAT: | £3,360.00 |
| b. | Landlord's valuation fees including VAT: | £2,400.00 |
| c. | HM Land Registry fees: | £7.00 |
| d. | Courier fees including VAT: | £355.14 |

However, the Applicant has produced a form of spreadsheet upon which the Respondent has endorsed its comments and to which the Applicant has replied, (pages 38-41) which sets out total costs claimed as follows:

a.	Legal fees	£3,788.00
	VAT	£757.60
b.	Courier fees including VAT	£355.14
c.	HM Land Registry fees	£57.00
	VAT	£11.40
	Total	£4,969.14

The Tribunal has assessed the costs by reference to the said spreadsheet. Further, valuer's fees of £2,400 are included in the application. There appears to be no objection to those. The valuer's invoice appears at page 48.

- 10 Section 33 of the Act provides:

(1) Where a notice is given under section 13, then ... 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 specific 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 sub-section 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 sub-section (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”.

11 The Respondent is liable for the Applicant’s costs as provided for by section 33 subject to the test of reasonableness set out in sub-section 33(2). Those being costs of and incidental to the matters set out in section 33(1) incurred in pursuance of the initial notice served by the Respondent under section 13 of the Act.

12 The Tribunal’s Decision

13 Section 33 of the Act seeks to do two things. Firstly, given that the Act confers a right on the tenants of leasehold flats to compel their landlord to sell the freehold interest in their property to them, it provides as a matter of basic fairness that the tenants in exercising such rights should reimburse the costs that the landlord reasonably incurs as a consequence.

14 Secondly, it seeks to provide some protection for tenants against being required to pay more than is reasonable. Section 33 does not provide an opportunity for a landlord’s advisers to charge excessive fees in the expectation that they can be recovered from the tenants. That is the purpose of the test of reasonableness under section 33(2) of the Act. That test has been described as the ‘reasonable expectation test’. What would a landlord reasonably expect to pay if he was paying the costs himself?

15 The Tribunal has carefully considered the written submissions made by both parties. Attached to this Decision is the Schedule of Costs with the comments of the parties endorsed thereon, together with the Tribunal’s determination set out in the final column of the Schedule.

- 16 The Respondent raises a general issue in relation to the hourly rates charged by the Applicant's Solicitors. The hourly rates claimed by the Applicant are £625 for partner SJS, £495 for partner SB, and £385 for senior assistant solicitor SAK. All are described as grade A fee earners.
- 17 The Respondent says that the nature of the matter does not justify a departure from the Solicitors' guideline hourly rates for London of £512 for a grade A fee earner, £348 for a grade B fee earner, £270 for a grade C fee earner and £186 for a grade D fee earner. Further, the Respondent says, there are certain matters which properly could and should have been dealt with by a grade B fee earner.
- 18 The Applicant says that the guideline hourly rates are not relevant to a determination of costs payable pursuant to section 33 of the Act. They are, says the Applicant, guideline rates for summary assessment in civil court matters where the recovery of costs are not, as in this case, determined by specific statutory provisions. Further, the Applicant says, the guideline hourly rates do not reflect the specialist nature of leasehold enfranchisement work or the indemnity which the Applicant says is intended for by reason of section 33 of the Act. The guideline hourly rates the Applicant says relate to costs incurred in respect of civil proceedings which are "*markedly different to the compulsory acquisition nature of enfranchisement and the provision set out in section 60 (sic) of the Act*". The rates charged, the Applicant says, are entirely consistent with the usual charge-out rate for solicitors in Central London. The Applicant refers the Tribunal to two decisions of the Tribunal: **Daejan Investments Limited v Parkside 78 Limited** (2004); and **Daejan Investments Limited v Said Abdelhafiz Mohammed Hussien Elkakim** (2022). Neither Decision is binding on this Tribunal.
- 19 The costs payable by the Respondent by reason of section 33 of the Act may be a creature of statute but they are subject to a test of reasonableness, 'the reasonable expectation test'. Whether or not the guideline hourly rates are directly applicable to the assessment of statutory costs, they are nonetheless in the view of the Tribunal a helpful starting point for the Tribunal in determining whether an hourly rate claimed is reasonable. The Tribunal accepts that in substantial and/or complex matters an hourly rate in excess of the guideline figures may be appropriate where other factors, for example the value of the matter, the level of complexity, the urgency or importance of the matter, would justify a higher rate. The Tribunal does not accept the Applicant's submission that the provisions of the Act or the specialist nature of leasehold enfranchisement work are such that would require such a level of expertise that would justify a rate in excess of the guideline hourly rates. The individual solicitors who had the conduct of this matter on behalf of the Applicant are no doubt solicitors who specialise in this particular area of law. They specialise in leasehold enfranchisement matters. The guideline hourly rates particularly with reference to Central London will, in the view of the Tribunal, already reflect the fact that the solicitors to which they apply will have a particular degree of specialism and expertise.
- 20 The Tribunal therefore applies the guideline hourly rates to the Applicant's costs.

21 The Schedule of Costs at pages 38-41 as stated above makes reference to certain disbursements, namely courier fees of £295.95 plus VAT and HM Land Registry fees of £57 plus VAT. These do not appear to be disputed by the Respondent. Further, they are in the view of the Tribunal reasonable and accordingly are allowed. Nor do the valuer's fees of £2400 (the invoice is at page 43) appear to be disputed. The valuers' fees are in the experience of the Tribunal reasonable and are also allowed.

22 **Summary of the Tribunal's Decision**

23 The Tribunal determines that the costs payable by the Respondent pursuant to section 33 of the Act are as follows:

a.	Legal costs	£2,343.10
	VAT thereon	£468.62
b.	Valuer's fees including VAT	£2,400.00
c.	Courier's fees including VAT	£355.14
d.	HM Land Registry fees including VAT	£68.40
	Total	£5,635.26

Dated this 14th day of April 2022

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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 application is seeking.