



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

Case reference : **LON/0AQ/OC9/2023/0096**

Property : **Alden Mead, 14 the Avenue, Hatch End,
Pinner HA5 4ES**

Applicant : **Alden Mead Freeholders Limited**

Representative : **Gandecha & Pau Solicitors**

Respondent : **Benjebar Limited**

Representative : **Keystone Law**

Type of application : **Application for a determination of
reasonableness costs incurred under
s.33(1) of the Leasehold Reform,
Housing and Urban Development Act
1993**

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **31 January 2024**

DECISION

The tribunal's decision

- A. The tribunal finds the reasonable costs payable by the applicant nominee purchaser to the respondent are **£8,865.43** and represent the following:

Legal costs totalling 6 hours at £475 per hour - £2,850.00 plus VAT (£3,420).

Courier costs of £45.42

Land registry fee of £6.00

Surveyors costs of £4,500 plus VAT (£5,400).

The application

1. The applicant seeks a determination from the tribunal as to the reasonable costs that are payable to the respondent pursuant to section 33(1) of the Leasehold Reform, Housing and Urban Development Reform Act 1993 ('the 1993 Act').

Background

2. By a Tenant's initial notice of claim dated 17/1/2023, the participating tenants Vikram Narandas Moraji Tanna and Rita Vikram Tanna (Flat 1); Alpana Popcat and Seetal Popat (Flat 2 and garage 2); Vilas Hindocha (Flat 3 and garage 3); Sanjay Ashar (Flat 4); Michelle Parmenter (Flat 5 and garage 1) and Ruwanthi Enakshi Kumari Perera (Flat 6) sought to purchase the freehold of the subject property at Alden Mead 14 The Avenue, Hatch End, Pinner HA5 4ES ('the Premises').
3. In a Counter-Notice dated 28 March 2023 the respondent admitted the participating tenants' right to collectively enfranchise but disputed the proposed premium(s).
4. Subsequently, the participating tenants did not proceed with the enfranchisement although on 2 May 2023 queried why the respondent asserted it was invalid. This appears to be by reason of the failure to include a plan with the Notice, the respondent took the view the Notice was invalid. This view appears not to have been substantively challenged by the participating tenants and the Nominee Purchaser Alden Mead Freeholders Ltd did not acquire any interest in the Premises.
5. In an email dated 20 April 2023 the respondent sent the applicant's representative a breakdown of the legal and surveyors costs claimed from the participating tenants (either collectively or individually). Legal costs were charged at a rate of £475 (plus VAT) per hour and totalling a rounded up figure of 8 hours.

The issues

6. The applicant disputes the reasonableness of costs incurred between 09/02/2023 to 28/03/2023:

Legal fees of £3,851.42 plus VAT, courier fees of £45.42 and £6 office copies.

Surveyor's fees of £4,500 plus VAT.

The applicant asserts the following are the reasonable costs payable:

Legal fees of £750 plus VAT

Surveyor's fees of £2,500 plus VAT

The hearing

8. Neither party requested an oral hearing the application was determined on the papers provided in the form of a bundle of 59 (electronic) pages.
9. In a Statement of Case dated 10 November 2023 the applicant asserted the respondent had not fully complied with the tribunal's directions; the nominee purchaser is liable for reasonable costs not the participating tenants; the hourly rate of £475 plus VAT is not reasonable; the matter was fairly simple and should have been conducted by a 'Grade C' fee earner at the rate of £185; the time spent is unreasonable and 4 hours only should be allowed; the majority of surveyor's fees have been unreasonably incurred and should be limited to £1,500 (excluding VAT) in line with the applicant's own surveyor's fees.
10. In a response dated 6 December 2023 the respondent asserted the tribunal's directions were 'de facto' complied with as a Statement/breakdown of costs had been provided on 20 April 2023; the participating tenants as directors of the nominee purchaser are required to fund the company in order to meet its liabilities; the work is specialised and requires expertise as illustrated by the tenants' failure to serve a valid Notice; the instruction of an experienced surveyor was necessary in order to serve a counter-notice as planning permission for an additional floor to the building had been granted notwithstanding the alleged invalidity of the Notice.

The tribunal's reasons

11. Section 33 of the 1993 Act states:

(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.

12. The tribunal finds this proposed enfranchisement was not as straightforward as suggested by the applicant in light of the planning

permission granted for the extension of the building and the inclusion of a number of garages. The tribunal finds it reasonable for the applicant to have instructed and experienced solicitor to deal with this matter although the tribunal finds the overall time spent on this matter to be somewhat excessive and reduces this to 6 hours at an hourly rate of £475 (plus VAT).

13. The tribunal finds the respondent's service of an apparently invalid notice and a failure to appreciate its invalidity until May 2023 (if at all) confirms the legal complexity of this area of law and the need for appropriate expertise. The tribunal also notes the respondent seeks costs only to the period 28/3/2023 and not after this date although the applicant was still apparently seeking to pursue the enfranchisement of the Premises.
14. The Tribunal accepts the respondent's surveyor's fees as reasonable in light of the need to carry out a thorough survey of the Premises and garages. The tribunal does not accept the applicant's assertions that no more than £2,500 should be charged in line with their own surveyor's fees in the absence of any explanation of what the applicant's surveyor did to reach a premium for the purpose of the initial notice. Therefore, the tribunal finds the breakdown of the respondent's surveyor's fees have been detailed and account for the extended period of time that had to spent on the valuation and are reasonable and payable in full.
15. The tribunal finds the use of a courier at £45.42 and a stand Land Registry fee are also reasonable and payable by the applicant. The tribunal finds where VAT is incurred this is recoverable by the respondent from the applicant.
16. In conclusion the tribunal finds the reasonable costs payable by the applicant to the respondent are **£8,865.43**.

Name: Judge Tagliavini

Date: 31 January 2024

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).