



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

Case Reference : LON/OOAH/OCE/2022/0135
Property : 77 Outram Road, Croydon CRO6XJ
Applicant : Outram Residential Limited
Respondent : 77 Outram Road, Croydon Limited
Type of Application : Application for costs
Tribunal Members : Judge Shepherd
Richard Waterhouse FRICS
Date of Determination : 19th April 2024

Determination

1. In this case Outram Residential Limited (“the Applicants”) seek their costs pursuant to an application under Rule 13 of the Tribunal rules. The Respondent 77 Outram Road, Croydon Limited (The Respondent) opposes the application. Both parties instructed counsel to their act on their behalf, Mr Modha for the

Applicants and Ms Gray for the Respondents. The Tribunal is grateful to them for their cogent submissions.

2. The Tribunal previously made a determination of the terms of acquisition by the Applicants of the freehold of the semi-detached premises at 77 Outram Road, Croydon, CR0 6XJ (“the Premises”) from the Respondent. The Applicants are a nominee purchaser owned by the leaseholders of Flats 1 & 2 in the premises. The premises comprise flats on the ground, first, and second floors. The freehold of the building and external areas of the premises were registered to the Respondent on 15th May 2020. Sheetal Ladva was registered as the leaseholder of Flat 1 on 4th November 2013. Fox and Stevens Property Services Limited was registered as the leaseholder of Flat 2 on 24th November 2020. Alexander Miller was registered as the leaseholder of Flat 3 on 13th January 2010
3. The Tribunal considered that a new lease of Flat 3 had been granted but not previously disclosed by the Respondents and that when one took this into account the value would be substantially reduced. We accepted the Applicants’ surveyor’s evidence of valuation contained in her addendum report of 11 March 2022 at £5211.00. The Applicant’s proposed transfer deed was accepted.

Background to the costs application

4. Following the determination detailed above the Applicants made an application for costs under Rule 13. There is some sense in detailing the chronology of the case here.
5. The Applicants served an initial notice under Section 13 Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) on 11th March 2022. The Respondents served a positive counter-notice on 16th May 2022. In its covering letter, the Respondents challenged the validity of the notice. The Applicants served a second initial notice on 19th May 2022. The Respondents served a

positive counter-notice on 26th July 2022. In its covering letter, the Respondents challenged the validity of the Second Section 13 notice.

6. The Applicants applied under Section 24(1) of the Act for a determination of the premium on 11th October 2022. Following a 3-month stay until 19th January 2023, the Tribunal first issued directions on 9th February 2023. Those directions were amended on 11th April 2023.
7. On 27th July 2023, following a Case Management Hearing, Judge Latham and Evelyn Flint issued further directions and listed the hearing on 19th September 2023. The Tribunal issued further directions having noted that the only issue in dispute was the premium. A draft TR1 with tracked changes, was provided by The Applicant's solicitors on 11th May 2023 in compliance with the Tribunal's directions. The Applicants also provided an expert report in proper form produced by Emma Biddle MRICS dated 31st August 2023. In the report Ms Biddle concluded that the premium payable for the enfranchisement was £15300. The flats were individually valued at £245k (Flat 1) , £220k (Flat 2) and £190k (Flat 3). The Respondent failed to allow access to Ms Biddle to inspect Flat 3 but from the lease plan it was assumed that this was a one bedroom flat with kitchen, bathroom and reception room. The lease of Flat 3 was believed to have 69.07 years to run.
8. The Respondents failed to provide an expert report in the proper form. On the day of the hearing on 19th September 2023 they provided what was headed a "Valuation Summary" they had received from David Robson MRICS. He had inspected the premises with Ms Biddle on 15th September 2023. His summary was not an expert report because it is not a report to the Tribunal and does not contain the correct declarations. In any event he was also working on the basis that the lease of Flat 3 had 69 years to run. He had also not inspected flat 3. He arrived at a valuation of £17260.

9. On 18th September 2023 , the day before the hearing, the Respondents sent an email to the Tribunal suggesting the matter had been settled on the basis that they were agreeing the valuation figure of Ms Biddle. The parties were asked to provide a consent order. The Claimant replied to the effect that the matter had not settled because they had received new information which affected Ms Biddle's valuation. The information concerned had been provided by the Respondent in an email on 18th September 2023 which stated that a new lease had been granted in relation to Flat 3 with effect from 10th June 2020. The Registration of the new lease was pending with the Land Registry. The Applicant had requested information about the lease having checked the Land Registry day list as early as 1st September 2023 but no disclosure was forthcoming.
10. As a result of the new lease Ms Biddle prepared an Addendum report dated 18th September 2023 which concluded that the value of the freehold was £5211. As indicated above the Tribunal largely accepted Ms Biddle's evidence.

The basis of the costs application

11. The Applicants say that the Respondents have repeatedly and deliberately delayed the enfranchisement process in order to avoid the consequences of it namely the loss of the freehold. Mr Modha identified the occasions on which he said there had been deliberate delay. It is worth looking at the litigation process in detail.
12. Following the stay the Tribunal first issued directions on 09/02/23. These required the parties to return a listing questionnaire. The Applicant provided its listing questionnaire at the beginning of March 2023. The Respondent's listing questionnaire provided for very little availability. The Respondents then dis-instructed their first set of solicitors in about February 2023 and did not obtain new representatives. Nonetheless in correspondence on 27th February 2023 they said that their solicitors had asked for a copy of the Applicants' valuation. In an email dated 2nd March 2023 the Respondents said they were

seeking an extension to obtain legal representation. This request was rejected by Judge Nicol. The Respondents sought again to extend the timetable on 14th March 2023. They said they were in the process of engaging new representation. They made a third request on 3rd April 2023 when they said they were in the process of engaging an enfranchisement specialist. They said that their previous solicitor had been engaged throughout the previous Tribunal proceedings and they had only recently been discharged.

13. The Tribunal then issued revised directions on 11/04/23. A new hearing window of 03/07/23-28/07/23 was provided. The Applicants provided its listing questionnaire at the beginning of May 2023, and then again at the end of May 2023. The Respondents instructed new solicitors on about 04/05/23. Their tenure was shortlived and they were dispensed with during May 2023. The Respondents did not respond to the Applicant's draft TR1 with any suggestions and an inspection was not allowed of Flat 3.

14. On 27/06/23, the Tribunal gave further directions following a case management hearing. These required a joint inspection or separate inspection of the flats, the exchange of valuation calculations, a joint statement of agreed facts and disputed issues, and the exchange of valuation reports. Mrs Miller one of the Respondents' directors attended this hearing. She agreed the timetable. She indicated that the Respondents had instructed a surveyor, Mr Armstrong of Westburys. Immediately afterwards the Respondents sought to vary the directions just made. Ms Miller said she was distracted and failed to mention her holiday dates. In a lengthy letter dated 7th July 2023 the Respondents indicated that they were in the process of finding a new valuer and requested a further delay in the directions. It was clear therefore that Mr Armstrong had not been instructed despite the fact that the Tribunal had been told that he was. The Respondents said he was out of the country and then unwell. Despite this the Respondents apparently had a surveyor acting for them at the end of July 2023 because the surveyor advised the Applicants' surveyor that the Respondents would not enable access to Flat 3 (see email from Applicants' solicitor dated 7th August 2023) The Applicants' surveyor complained to the Tribunal about the

failure to provide access and Judge Dutton warned the Respondents about continued failure to cooperate on 24th August 2023

15. In a further letter to the Tribunal on 11th September 2023 the Respondents said they had engaged Mr Robson as a valuer and a valuation was due to be carried out that week. In the event no proper expert evidence was available from the Respondents at the hearing on 19th September 2023. The letter to the Tribunal speaks volumes in relation to the Respondents view of the enfranchisement process: *the issue of being forced to relinquish the freehold interest in our own home in favour of two leaseholders, neither of whom live at the house, and for whom the property is an investment rather than a home , has been a challenging one to manage.* The letter also makes clear that counsel's opinion had been obtained because the Respondents instructed their solicitor not to agree the sale.

16. The Respondents had no solicitor on the record at the date of the hearing but had previously used two different firms. A day prior to the final hearing (18 September 2023) the Respondent wrote to the Tribunal/Applicant confirming they would accept the premium offer proposed by the Applicant in their section 13 notice which was originally served in March 2022 . After disputing the premium sum for 18 months the Respondent suddenly accepted the Applicant's premium offer the day before the final hearing giving no reason or explanation. It is tolerably clear that the Respondents did so as they knew that the Applicant had discovered that the Respondent had deliberately withheld the fact that a lease extension had been granted for Flat 3.

The law

17. The relevant parts of Rule 13 of the Tribunal rules state the following:

13. Orders for costs, reimbursement of fees and interest on costs

- (1) *The Tribunal may make an order in respect of costs only –*
 - (a) *under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*
 - (b) *if a person has acted unreasonably in bringing, defending or conducting proceedings in –*
 - (i) *an agricultural land and drainage case*
 - (ii) *a residential property case or*
 - (iii) *a leasehold case; or*
 - (c) *in a land registration case.*

18. The test to apply is set out in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 290 (LC). At para (14) the Upper Tribunal stated the following:

An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in Ridehalgh at 232E, despite the slightly different context. “Unreasonable” conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's “acid test”: is there a reasonable explanation for the conduct complained of?

19. The Upper Tribunal proposed a three stage test to apply as follows:

28. *At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.*

29. *Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that “the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid”, subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case “in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.” It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.*

30. *At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be*

taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.

20. The Upper Tribunal also considered the question of costs against litigants in person:

32. In the context of rule 13(1)(b) we consider that the fact that a party acts without legal advice is relevant at the first stage of the inquiry. When considering objectively whether a party has acted reasonably or not, the question is whether a reasonable person in the circumstances in which the party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of proceedings before it, than is in fact possessed by the party whose conduct is under consideration. The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.

33. We also consider that the fact a party who has behaved unreasonably does not have the benefit of legal advice may be relevant, though to a lesser extent, at the second and third stages, when considering whether an order for costs should be made and what form that order should take. When exercising the discretion conferred by rule 13(1)(b) the tribunal should have regard to all of the relevant facts known to it, including any mitigating circumstances, but without either “excessive indulgence” or allowing the absence of representation to become an excuse for unreasonable conduct.

34. *At paragraph 26 of Cancino the tribunal considered the balance which is required to be struck when considering application for costs against unrepresented parties:*

“First, the conduct of litigants in person cannot normally be evaluated by reference to the standards of qualified lawyers. Thus the same standard of reasonableness cannot generally be applied. On the other hand the status of unrepresented litigants cannot be permitted to operate as a carte blanche to misuse the process of the tribunal. The appropriate balance must be struck in every case. In conducting this exercise, tribunals will be alert to the distinction between pursuing a doomed appeal in the teeth of legal advice and doing likewise without the benefit thereof... Stated succinctly, every unrepresented litigate must, on the one hand be permitted appropriate latitude. On the other hand, no unrepresented litigate can be permitted to misuse the process of the tribunal. The overarching principle of facts sensitivity looms large once again.”

We agree with these observations. We also find support in Cancino for our view that rule 13(1)(a) and (b) should both be reserved for the clearest cases and that in every case it will be for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct has been unreasonable.

Application of the law

21. Mr Modha said the Applicants conduct was unreasonable as they had continually sought to delay the legal process citing a lack of legal advice, illness and lack of a surveyor. Their conduct did not permit a reasonable explanation. They had not filed witness evidence for the costs application despite being allowed to do so and therefore the Tribunal had no real evidence of the reason for the delays. The only explanation for their conduct was that they didn't want to give up the freehold. This was compounded by their failure to disclose the extension of the lease of Flat 3. There had been repeated delays which had ramped up the costs for the Applicants.

22. Ms Gray stressed the fact that the Respondents were in person without solicitors much of the time. She said that the failure to provide access to Flat 3 despite an order of the Tribunal was justified because the Respondents as a legal entity did not own the flat although Mr Miller did. She was unable to explain why the Respondents had dispensed with their previous solicitors. She alleged that the Applicants' solicitors adopted bullying tactics in their correspondence. She also said that some of the communication with the Tribunal staff in particular Mr Rockall may have led the Respondents to believe the Tribunal was biased against them. She said the conduct of the Applicant's solicitor and Mr Rockall had "fanned the flames". They had been made to feel the system was against them and this may explain their actions. She said that some of the delay had been caused by the Applicants themselves. The final hearing was in any event effective. Finally, she said that the costs claimed by the Applicants were not proportionate.

Determination

23. We have no hesitation in deciding that this is an appropriate case for a Rule 13 costs award. The Respondents failed to provide witness evidence to properly explain their conduct. In the absence of this evidence the documents themselves in any event reveal a concerted effort to avoid enfranchisement. This was a deliberate and calculating delay in an effort to avoid the inevitable enfranchisement.

24. Although the Respondents were litigants in person this was by choice. They had previously had solicitors and had received counsel's advice. They had dispensed with their services, probably because they did not like the advice they were receiving – likely that they should cooperate with the legal inevitability of enfranchisement.

25. Equally it is clear that the Respondents had chosen not to engage a valuer when required to do so. This was probably again because they didn't accept the valuer's advice. In any event they had deliberately suppressed the information about the lease

extension in flat 3 and had not even told the valuer about this so a proper valuation was not possible.

26. None of the arguments put forward by Ms Gray swayed us in our interpretation of the Respondents' poor conduct. The Respondents were litigants in person but they were in this position by choice. They were not disadvantaged as such. They do not fall into the category of litigants identified in Willow Court. The argument that a failure to provide access was in some way excused because Mr Miller and not the Respondents owned the lease of Flat 3 is overly technical and unrealistic. Plainly if the Respondents wanted to provide access they could have arranged it with Mr Miller. They are effectively the same party. Neither was the Tribunal impressed by the attempt to divert responsibility to the Applicants' solicitors. The letters we were taken to as evidence of bullying demonstrated merely a real frustration at the Respondents' failure to cooperate. Mr Rockall was complained about and removed from the case. In any event his misjudged words would not have justified the Respondents' conduct.

27. Applying the three stage test we consider that a costs order is justified and should be made. Mr Modha accepted that his client would not get all of the costs claimed. We think this is correct. Despite objections by Ms Gray its clear that the costs incurred were inflated by the delays even though the hearing date was maintained. We don't consider that the solicitors or counsel used were over qualified for what became a relatively technical case and we also consider that the work done was justified. However, we should only award costs which would not have been incurred but for the Respondents' conduct. Doing the best we can we will allow 50% of the costs claim - £14704. We received a further costs statement from the Applicants on the evening before the hearing but its not clear on what basis is claimed over and above the original schedule and we make no order in that regard.

28. In summary we determine that the Respondents should pay costs of £14704 including vat.

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appendix

Valuation date 11 March 2022

Address	77 Outram Road Croydon
Case Reference	LON/00AH/OCE/2022/0135

Basic Information Flat 1					
Valuation Date	11 March 2022				
Existing lease Expiry Date	23 June 2181				
Years unexpired	159.28				
Existing Ground Rent	£0				
Freehold value	£245,000				
Extended lease value	£245,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Reversion value Flat 1					
Reversion to freehold value				£245,000	
Pv of £1	159.28	Years @	5.00%	<u>0.00042</u>	
Reversion value					<u>£ 103</u>
Premium payable Flat 1					£ 103

Address	Flat 2				
Case Reference					
Basic Information Flat 2					
Valuation Date	11 March 2022				
Existing lease Expiry Date	22 October 2110				
Years unexpired	88.61				
Existing Ground Rent	£100				
Basis of review	25				
Date of 1st review	23 October 2036				
Years to 1st review	14.62				
Length of period	25				
Rent at 1st review	£200				
Date of 2nd review	17 October 2061				
Years to 2nd review	39.60				
Length of period	25				
Rent at 2nd review	£300				
Date of 3rd review	11 October 2086				
Years to 3rd review	64.59				

Length of period	24.03				
Rent at 3rd review	£400				
Freehold value	£220,000				
Extended lease value	£220,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Term Value					
Term 1					
Ground rent				£ 100.00	
YP	14.62	Years @	7.00%	8.9731	
PV of £1	0	Years @	7.00%	<u>1.00</u>	
					£ 897
1st review					
Ground rent				£ 200.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	14.62	Years @	7.00%	<u>0.37</u>	
					£ 867
2nd review					
Ground rent				£ 300.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	39.60	Years @	7.00%	<u>0.0686</u>	
					£ 240
3rd review					
Ground rent				£400	
YP	24.03	Years @	7.00%	11.4745	
PV of £1	64.59	Years @	7.00%	<u>0.01</u>	
Term Value					£ 58
Reversion value Flat 2					
Reversion to freehold value				£220,000	
Pv of £1	88.61	Years @	5.00%	<u>0.01325</u>	
Reversion value					£ <u>2,916</u>

Total Premium payable flat

2

£ 4,978

Address

Flat 3

Case Reference

Basic Information Flat 3

Valuation Date	11 March 2022
Existing lease Expiry Date	23 June 2181
Years unexpired	159.28
Existing Ground Rent	£0
Freehold value	£190,000
Extended lease value	£190,000
Capitalisation Rate	7.00%
Deferment Rate	5.00%

Reversion value Flat 3

Reversion to freehold value				£190,000	
Pv of £1	159.28	Years @	5.00%	<u>0.00042</u>	
Reversion value					<u>£ 80</u>

Premium payable flat 3

£ 80

Premium for specified premises

Premium payable Flat 1	£	103	
Premium payable Flat 2	£	4,978	
Premium payable Flat 3	<u>£</u>	<u>80</u>	
			£ 5,161

Premium for additional premises

Say		<u>£ 50.00</u>
Total payable		£ 5,211

Valuation date 25 May 2022

Address	77 Outram Road Croydon				
Case Reference	LON/00AH/OCE/2022/0135				
Basic Information Flat 1					
Valuation Date	25 May 2022				
Existing lease Expiry Date	23 June 2181				
Years unexpired	159.08				
Existing Ground Rent	£0				
Freehold value	£245,000				
Extended lease value	£245,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Reversion value Flat 1					
Reversion to freehold value				£245,000	
Pv of £1	159.08	Years @	5.00%	<u>0.00043</u>	
Reversion value					<u>£ 104</u>
Premium payable Flat 1					£ 104

Address	Flat 2				
Case Reference					
Basic Information Flat 2					
Valuation Date	25 May 2022				
Existing lease Expiry Date	22 October 2110				
Years unexpired	88.41				
Existing Ground Rent	£100				
Basis of review	25				
Date of 1st review	23 October 2036				
Years to 1st review	14.41				
Length of period	25				
Rent at 1st review	£200				
Date of 2nd review	17 October 2061				
Years to 2nd review	39.40				
Length of period	25				
Rent at 2nd review	£300				
Date of 3rd review	11 October 2086				
Years to 3rd review	64.38				
Length of period	24.03				
Rent at 3rd review	£400				

Freehold value	£220,000				
Extended lease value	£220,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Term Value					
Term 1					
Ground rent				£ 100.00	
YP	14.41	Years @	7.00%	8.8988	
PV of £1	0	Years @	7.00%	<u>1.00</u>	
					£ 890
1st review					
Ground rent				£ 200.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	14.41	Years @	7.00%	<u>0.38</u>	
					£ 879
2nd review					
Ground rent				£ 300.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	39.40	Years @	7.00%	<u>0.0696</u>	
					£ 243
3rd review					
Ground rent				£400	
YP	24.03	Years @	7.00%	11.4745	
PV of £1	64.38	Years @	7.00%	<u>0.01</u>	
Term Value					£ 59
Reversion value Flat 2					
Reversion to freehold value				£220,000	
Pv of £1	88.41	Years @	5.00%	<u>0.01339</u>	
Reversion value					£ 2,945
Total Premium payable flat 2					
					£ 5,016

Address	Flat 3				
Case Reference					
Basic Information Flat 3					
Valuation Date	25 May 2022				
Existing lease Expiry Date	23 June 2181				
Years unexpired	159.08				
Existing Ground Rent	£0				
Freehold value	£190,000				
Extended lease value	£190,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Reversion value Flat 3					
Reversion to freehold value				£190,000	
Pv of £1	159.08	Years @	5.00%	<u>0.00043</u>	
Reversion value					<u>£ 81</u>
Premium payable flat 3					£ 81

Premium for specified premises		
Premium payable Flat 1	£ 104	
Premium payable Flat 2	£ 5,016	
Premium payable Flat 3	<u>£ 81</u>	
		£ 5,201
Premium for additional premises		
Say		£ 50.00
Total payable		£ 5,251