



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

Case reference : **LON/00AG/OC9/2024/0061**

Property : **Queen Court, Queen Square, London
WC1V 3BA**

Applicants : **(1) Dalvi Kaur
(2) LM Homes Limited**

Representative : **Mr Simon Serota, solicitor**

Respondent : **Queen Court Freehold Company
Limited**

Representative : **Ms Diane Doliveux, counsel**

Type of application : **For the determination of the costs
payable – s.33(1) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge Tagliavini
Mr I Holdsworth, FRICS**

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

Date of decision : **9 October 2024**

DECISION

Decisions of the tribunal

1. The tribunal determines that the sum of £6,321.00 is payable by the respondent to the first applicant in respect of costs pursuant to s.33 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act').
2. The tribunal determines that the sum of £7,734.60 is payable by the respondent to the second applicant in respect of costs pursuant to s.33 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act').

The application

3. The applicants seeks a determination as to the costs payable by the respondent pursuant to section 33(1) of the 1993 Act.

The background

4. This application devolves from an initial application made in about 2017 to the tribunal by the respondent nominee purchaser seeking a determination as to the right to and extent of the property to be acquired pursuant to an initial s.13 notice dated 24 November 2016. A counter-notice dated 6 February 2017 was served on the respondent pursuant to s.21 of the 1993 Act denying the nominee purchaser's right to acquire the freehold.
5. A preliminary issue arising from that initial application was determined by the tribunal and subsequently appealed to the Upper Tribunal and then determined by the Court of Appeal in a decision dated 13 March 2020. On 3 July 2023, the initial application made by the respondent nominee purchaser was withdrawn pursuant to s.28(1) of the 1993 Act. applicant intermediate landlords now seek a determination of their recoverable costs pursuant to s.33 of the 1993 Act.

The hearing

6. The hearing was held by way of video at which the applicants were represented by Mr Simon Serota, solicitor of Wallace LLP and the respondent was represented by Ms Diane Doliveux of counsel. The parties relied upon a digital bundle comprising 257 pages.

The applicants' case

7. The first applicant sought costs of £6,321.00 (including VAT) of which £2,450.00 related to the fee charged by Mr Mark Wilson BSc MRICS and Mr Ghulam Yasin BSc MRICS for a valuation report dated 17/02/2017. The second applicant sought costs of £7,734.60 (inc. VAT) of which £2,450.00 related to the valuation report of Mr Wilson and Mr Yasin dated 24/01/2017.
8. At the hearing, Mr Serota told the tribunal that the claim for costs relating to an application made in 2017, were not 'statute-barred' as the cause of action did not arise until the application to which the costs relate was withdrawn by the respondent on 3 July 2023 and relied on s.29(6) of the 1993 Act in support. Mr Serota referred the tribunal to two schedules of costs which detailed the work carried out on behalf of the first and second applicants respectively in the period 11/01/2017 to 10/12/2017 (sic).^{*} Also included in the documents before the tribunal were the Valuer's report with appendices; the Valuer's invoices; Wallace LLP's letter of engagement and invoice dated 28/02/2017.

^{}Having regard to both schedules the tribunal finds on the balance of probabilities this date is meant to read 10/02/2017 but in any event finds the work described as falling within s.33 of the 1993 Act.*

9. Mr Serota submitted that the costs schedule were sufficiently detailed for a summary assessment to be made by the tribunal and accorded with the tribunal's directions dated 4 June 2024. Further, the time spent by him in respect of the first applicant amounted to 4.7 hours and 6.7 hours in respect of the second applicant. He submitted that the matter was complex and required the attention of a senior partner and was more cost effective for him to have carried out the work during this limited time frame rather than delegating to and overseeing a less experienced junior member of staff.

The respondent's case

10. It was submitted by Ms Doliveux that the application for costs was statute-barred due to the operation of the Limitation Act 1980 as the cause of action arose when the costs were incurred i.e. when the activities to which they relate were carried out in 2016. Consequently, this application was out of time as it was made more than six years after the cause of action arose.
11. Ms Doliveux also submitted in the alternative, that the costs were not adequately correlated to activities carried out under s.33 (a)(b))c) and (d) of the 1933 Act and that the applicants had failed to sufficiently prove their case. Further, the costs were excessive in that the use of and hourly

charge of a senior partner although no issue was taken with the valuer's fee other than to ask the tribunal to use its experience and expertise in deciding the appropriate cost of the valuer's reports. Ms Doliveux referred the tribunal to *John Lyon's Charity v Terrace Freehold LLP* [2018] UKUT 0247 (LC) for guidance on the application of s.33 of the 1993 Act when determining the amount of costs payable by a nominee purchaser.

The tribunal's decision

12. The relevant parts of 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.

13. The tribunal finds the cause of action arose at the date the respondent nominee purchaser withdrew its initial (enfranchisement) application from the tribunal on 3 July 2023; *see* s.28(4) of the 1993 Act. Therefore, the tribunal finds this application for costs is not statute-barred by the operation of the Limitation Act 1980.
14. The tribunal finds the applicants have sufficiently described the work carried out in respect of the first and second applicants, with the exception of the items listed below. Drawing upon its own knowledge of the initial application, tribunal finds the application to acquire the freehold of the subject property was legally complicated and required the knowledge and experience of a senior partner. The tribunal finds it was, in the circumstances reasonable for the work to be carried out on behalf of the applicants, not to be delegated to a more junior employee during the limited time frame in which costs are sought.
15. The tribunal finds the overall time spent by Mr Serota on the first and second applicant's responses and conduct of the litigation to be modest at 4.7 hours and 6.7 hours, respectively. The tribunal is satisfied the valuation reports were detailed, thorough and concerned issues that also fell outside of the more usual valuation reports parties seek to rely upon. Therefore, the tribunal finds the cost of the valuation reports to be reasonable and allows their cost in full.
16. In conclusion, the tribunal finds the costs sought by the first and second applicants are reasonable and are payable in full by the respondent.

Name: Judge Tagliavini

Date: 9 October 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).