



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

<b>Case reference</b>	<b>:</b>	<b>CAM/12UB/OC9/2024/0003</b>
<b>Property</b>	<b>:</b>	<b>Edeva Court, Wulfstan Way Cambridge CB1 8AF</b>
<b>Applicants</b>	<b>:</b>	<b>Avon Ground Rents Ltd</b>
<b>Representative</b>	<b>:</b>	<b>Colman Coyle Ltd</b>
<b>Respondents</b>	<b>:</b>	<b>Peter Somers Heslem &amp; Judith Somers Heslem (for Leaseholders at No. 1-12, excepting No.8).</b>
<b>Representative</b>	<b>:</b>	<b>Nick Leedham</b>
<b>Type of application</b>	<b>:</b>	<b>Determination under Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993</b>
<b>Tribunal Member</b>	<b>:</b>	<b>N. Martindale FRICS</b>
<b>Date of determination and venue</b>	<b>:</b>	<b>1 April 2025 at 197 East Road, Cambridge SB1 1BA</b>
<b>Date of decision</b>	<b>:</b>	<b>1 April 2025</b>

---

**DECISION**

---

**The Tribunal determines landlord's legal costs under s.33 at £2932 plus VAT and valuation fee of £1750, plus VAT. The parties have agreed HMLR costs.**

---

## REASONS

### Background

1. This is an application made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) in relation to the prospective enfranchisement of the Property. In their application undated, but received with covering letter 27 March 2024 from their agent, the applicants sought determination of their costs as landlord, in considering and responding to the application for enfranchisement received from leaseholders.
2. The principal initial notice of claim was dated 30 May 2023. The landlord had until 14 August 2023 to serve a counter notice either rejecting the claim or accepting it but on different terms. On 10 August 2023 the landlord accepted the validity of the notice but, offered different terms including a leaseback to the landlord of parts of the freehold title which the leaseholders had sought to purchase. Later, the notice of claim from the leaseholders, was withdrawn.
3. Directions dated 13 January 2025 were issued by Laura Lawless. These included requirements for the content and timing of submissions on the substantive matters of dispute over the S.33 costs. The application was listed for determination in the week commencing 31 March 2025. Neither party requested a hearing in person or online but were content with a paper determination.

### Law

4. Section 33 is reproduced in the Appendix 1 to this decision. It deals with freehold purchases. Similar provisions are set out at Section 60 for costs arising in the case of lease extensions.
5. The proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease, was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That decision related to the purchase of a freehold. The costs incurred by the landlord of obtaining professional services, in responding to a claim must be reasonable and have been incurred in dealing with the Notice and any subsequent transfer. The same approach applies to lease extensions.
6. Those landlord costs incurred and arising from the claim for purchase of a freehold must be for the purposes listed at S.33 (1) (a - e) 1993 Act, and from the claim for extension of a lease the purposes listed at S.60 (1)(a - c). The tenant is also protected either by section S.33(2) or S.60(2). Both sub-sections effectively limit recoverable costs to those that the

landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

7. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them. Furthermore when a court is determining costs, and where there is any doubt, the benefit should be resolved in favour of the paying party, CPR44.3 (2)(b).
8. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what S.33 or S.60 says, nor is *Drax* an authority for that proposition. Both sections are self-contained.

## **Statute**

### ***Leasehold Reform Housing and Urban Development Act 1993: S.33. 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).***

9. The Tribunal considered the case of *Sidewalk Properties Ltd v Twinn* [2015] UKUT 0122 (LC). Among other matters it distinguished between professional and administrative costs. The Act at S.33 or S.60, only allows the landlord to claim for the cost of *professional* services but not for administrative task. At paras 36-38 Martin Rodger QC wrote:

*36. I agree with the appellant that the task of instructing a surveyor is incidental to a valuation. Nevertheless in a case such as this it is an administrative rather than a professional task which no doubt relies on the use of standard instructions given to a surveyor who is very familiar with the requirements of statutory valuations under the 1993 Act. A client would not expect to be charged an additional fee for such tasks, the expense of which is subsumed instead in the fee payable to the solicitor.*

*37. I also accept that considering the valuation report of the surveyor is a task incidental to the valuation itself. Moreover, it is not an administrative task and it is legitimate, in my opinion, for the client to expect the solicitor to consider the valuation and to be satisfied that it is in accordance with the basis of valuation required by the Act. I can see no reason why a client should not reasonably and willingly expect to pay for that task to be undertaken, even where he is liable to meet the cost personally.*

*38. In a case in which an experienced surveyor is engaged to provide a valuation of a very modest property the work involved in considering and advising on the report ought not to be particularly time consuming. In this case it is said to have taken 12 minutes to advise on a single report and take instructions, which seems reasonable."*

### **Applicant Landlord's Case**

10. In the landlord's letter of 20 February 2024 (bundle p.98) to the leaseholders the clients costs state as recoverable were 1. £10,103 plus

VAT, £12124.20 2. surveying fees £2850.00 plus VAT, £3420: 3. Land Registry fees £111.00 plus VAT, £133.20. (HMLR does not levy VAT on charges). £15677.40 including VAT.

11. In the landlord's letter of 24 February 2024 (bundle p.100) to the leaseholders the clients legal costs stated as recoverable are subdivided between 5 fee earners. The Grades, experience, or areas of work specialism are not provided. It appears to the Tribunal that there is a partner Grade A, Neil Curbison, with 3No. Grade B lawyers and a junior member of staff. Their recharge rates and their total costs incurred are stated in a short table. These total £10103.50 plus VAT, £12124.20.
12. In the landlord's application form (bundle p.38) seeking costs, of 27 March 2024, it refers variously, at box 8 to "*£15,677.40 inclusive of VAT, surveyors fees and disbursements*" as the amount which is in dispute. It also states at box 8 "*£15,677.40 plus VAT*" as the amount which the applicant considers appropriate. The figures are contradictory they are either inclusive of VAT or exclusive: They cannot be both. From the landlords letter of 20 February 2024, the second number is wrong.
13. In the applicants statement of case, by 3 March 2025 the landlord's claim had been revised down to the following (bundle p.77): Legal fees at £9626.50 plus VAT (£11,551.80), Surveyors fees of £2850 plus VAT (£3420), Disbursements £111 plus VAT (this latter amount is now agreed). The total including £111 is now £14971.80.
14. The landlord's final costs schedule extends on A3 from bundle p.74 to page No.85. The applicant landlord's costs items are arranged in date order. The date of the items start at 26 June 2023 (Item 1), up to and past the date of service the counter notice 10 August 2023 (Item 23) and onwards to 19 February 2024 (Item 53). Application for Tribunal consent to withdraw the application was dated 16 February 2024.
15. Oldest cost first. Save for the valuation costs and HMLR costs which remain undated, as to when they were incurred. There is no supporting corresponding evidence of quantum or even of their existence. The landlord does not provide a copy of the valuation or of the instruction or of the final invoice paid or otherwise, from the person who prepared the valuation. The same goes for the HMLR costs, though they are considerably smaller in quantum. In any case this latter item has been agreed between the parties and now falls outside the Tribunal's jurisdiction.
16. Each item of cost in the schedule is labelled by the landlord with one or more subsections (a – e) of S.33, under schedule "Basis for Recovery", as set out above, though mainly under (a). The respondent leaseholders set out their in unnumbered and unlettered column - "Tenant's Comments" with "Tenant's Proposals" followed by the last column – "Landlord's

Response”. All original items, leaseholder responses, landlords counter responses are set out, from left to right, from top to bottom.

17. A Tribunal would normally expect to receive a short 2 or 3 sentence CV and a Grade for each participant in the legal work of the applicant and these might assist the Tribunal in assessing the experience, quality and complexity of work and the length of time that might reasonably be expected to be undertaken for each item by the particular fee earner. The landlord does not provide this. Whilst an experienced case earner might cost more, they should also be expected to undertake the same work in a shorter time period and essentially with minimal supervision.
18. The Tribunal does not have any information from the applicant on any of the case earners to support any particular Grade, or expertise, or unit cost, or the time that might be taken, save reference by the applicant in their schedule, to *“where possible work has been carried out by junior fee earner”* (p.78). However at bundle p.76 the Tribunal reads reference to both litigation and conveyancing staff being involved.
19. According to the schedule and accompanying landlords statement, the following individuals were involved for the landlord. There were 5No. quoted re-charge rates taken in order as they occur in the schedule: Charlie Anderson at £140/hr; Thomas Coyle at £235/hr; Neil Curbison at £390/hr; Sayrha Elani at £285/hr; Adam Palmer at £295/hr.
20. By number of items alone it appears that the majority of the work was carried out by Thomas Coyle as a senior case earner. A little work was undertaken at a more junior level, though more of the later items involved other senior case earners but no clear reason is given for their involvement. Despite the level of these fee earners a Partner becomes increasingly involved in later items even though the case was being undertaken by a senior case earner from the start.
21. Work may be approximately divided into that with the client; with the valuer; or with other lawyers over the documents generated and their correspondence. The client and valuer related work might further be subdivided into; routine sending/receipt of emails; timed telephone calls; sending/receipt of longer emails and letters. A date for each item of work was provided in the schedule. In excess of half (by number) the costs were said to have been incurred and recoverable even after the date of service of the counter notice.
22. The landlord’s schedule shows to work which appears largely as professional rather than administrative, but where the latter occurs it is not recoverable under S.33. Work is to be considered eligible for inclusion under S.33(1) *“...to the extent that they have been incurred in pursuance of the notice by the reversioner... for the reasonable costs of and incidental to any of the following matters...”*

## **Respondent Leaseholders' Case**

23. The landlords failed to comply with the directions by not supplying the qualifications, years of qualification and experience of each fee earner. The leaseholders did not however question the range of hourly rates or the grade of individual said to have carried out the work, but queried much of what was done, when and by which staff much of which was said to be duplication other of which could not be shown as covered by S.33. They did not appear to challenge the involvement of conveyancing lawyers with the litigation lawyers which may have been because their roles and involvement were not made clear in the applicant landlord's claim.
24. **Taking each Item of the Schedule in turn, the Tribunal's determined figure for each Item is shown in bold type:**
25. **Item 1: (a)** Landlord seeks 5 units at £140/hr, £70, to obtain title deeds, plans and deeds. The leaseholders say excessive and offer 2 units at £140/hr, £28. The Tribunal finds that while the freehold appears to be on only one title with one plan, it is subject to some 12 leases, each with a plan. Considering the number and potential complexity of title and leases derived from it the claim is justified: **£70.**
26. **Item 2: (b)** Landlord seeks 21 units at £235/hr, £493 under (b). This work appears to follow rather than precede item 1, as might be expected. The leaseholders say excessive and offer 7 units, £164.50. The work is principally to consider the leaseholders notice and to instruct a more junior member of staff, a trainee, to act in item 1. The task is to schedule the leaseholders regarding service and their qualification to participate in the purchase. Work compliments Item 1: **£493.**
27. **Item 3: (a) & (b)** Landlord seeks 29 units at £235/hr, £681 under (a) & (b). The work appears to be to consider the titles procured at Item 2 against Item 1. The leaseholders questioned the duplication arising here from item 2. They offer 6 units at £141. This is a generous time period but it allows for the work to be completed, thoroughly: **£681.**
28. **Item 4: (a)** Landlord seeks 1 unit £235/hr, £23. Notice to client of service addresses changes. The leaseholders say NIL as it would not be incurred personally by an applicant. Administration: **£Nil.**
29. **Item 5: (a)** Landlord seeks 15 units at £235/hr, £352. The time is to consider plans and review planning documents from client before drafting a counter notice. The leaseholders argue it's a standard counter notice with which these solicitors will be familiar and offer 10 units at £235 for that reason. It's unclear what relevance "planning documents" have to a solicitor, at this stage of the process but principally they are not title documents nor do they directly affect the content of notices. **£235.**

30. **Item 6: (a)** Landlord seeks 18 units at £235/hr £702, to review the papers and the counter notice title documents. The leaseholders argue a duplication of the work by Mr Coyle a Grade B fee earner and presumably a competent qualified member of staff to complete these. They offer NIL: The site does have the possibility of redevelopment and this could and as it turns out did, affect the application not proceeding. It is reasonable for a check on the counter notice given the values at stake. The redevelopment potential from an enfranchisement notice is not routine and deserves review. This is a generous time period but it allows for the work to be completed, thoroughly at this stage: **£702.**
31. **Item 7: (a)** Landlord seeks 2 units at £235/hr, £47 for the fee earner to consider possible invalidity of notice. Leaseholders challenge this on grounds of the admission by the freeholder that the 'challenge' to the initial notice. On that basis: **£47.**
32. **Item 8: (a)** Landlord seeks 1 unit at £235/hr, 23.50. The leaseholders question any time for this 6 minute supervision chat apparently for someone at Grade B. Nil. There is no supporting claim for the partner's time. This is a generous time period but it allows for the work to be completed, thoroughly at this stage: **£23.50.**
33. **Items 9 – 19** the leaseholders reject all of these fee claims as duplications of earlier work items and/or where a Grade A or B fee earner appears to be need supervision by a senior member of staff and or does not fall within any S.33 subsection. The leaseholders offer Nil for each item. All of this work was said to have been carried out before counter notice was served on 10 August 2023.
34. **Item 9: (a)** Landlord seeks 9 units at £235, £211.50. Leaseholders say this is to amend a previously drafted notice. This is a generous time period but it allows for the work to be completed, thoroughly: **£211.50.**
35. **Item 10: (a)** Landlord seeks 5 units at £235, £117.50. To draft client advice. Leaseholders say no evidence show what this was actually about as it fell within (a) on grounds of client confidentiality: **£Nil.**
36. **Item 11: (a)** Landlord seeks 3 units at £235, £70.50 for Grade B fee earner to discuss case with Partner about planning and redevelopment issues. See item 10 above: **£Nil.**
37. **Item 12: (a)** Landlord seeks 5 units at £235, £117.50 to amend plan and advise client. Should have been dealt with during the first consultation with the partner, leaseholders say no evidence it falls within (a). This is a generous time period but it allows for the work to be completed, thoroughly: **£117.50.**



38. **Item 13: (a)** Landlord seeks 6 units at £390, £234 to consider and redraft advice to client for counter notice. Leaseholders argue it's a duplication of earlier work. This is a generous time period but it allows for the work to be completed, thoroughly: **£234.**
39. **Item 14: (d)** Landlord seeks 1 unit at £235, £ to speak with the valuer. Not the valuation, not within S.33 (d), Nil. Administration: **£Nil.**
40. **Item 15: (d)** Landlord seeks 3 units at £235 for a call between surveyor, lawyer and client under (d). Not within S.33 (d). Administration: **£Nil.**
41. **Items 16 - 20: (a)** Landlord seeks more time to review, redraft, amend the counter notice now involving another Grade B fee earner Saytha Elahi. Total sums £164.50; £47; £142.50; £94; £23.50. These matters should have been prepared correctly earlier by the first Grade B fee earner after initial partner review and for specialist lawyers this work should not be necessary. The matter is not yet conveyancing: **£Nil.**
42. **Item 21: (a)** Landlord seeks 5 units at £235/hr, £117.50. To finalise notice and letter of service. Leaseholders accept 2 units for the letter £47.00. This is a generous time period but it allows for the work to be completed, thoroughly: **£117.50.**
43. **Item 22: (a)** Dealing rescheduling notice timetable. Landlord seeks 2 units at £235/hr, £47. Administration: **£Nil.**
44. **Item 23: (a)** Landlord seeks 4 units for a third senior case earner at £295/hr, £118. Leaseholders limit the time to 1 unit £29.50. The new involvement of this person is unclear under S.33 costs, Nil. **£Nil.**
45. **Counter Notice** is served on the leaseholders on 10 August 2023.
46. **Item 24: (d)** Landlord seeks 3 units at £235, £70.50, for preparing a draft TP1 transfer and valuer liaison. No draft was provided to the applicants or included in the bundle. Applicant says no evidence of work and but offers 1 unit at £235 £47. The basis of values had not been discussed by the parties, let alone agreed yet a transfer was being prepared ? Administration: **£Nil.**
47. **Item 25: (d)** Landlord seeks 3 units to consider need for planning advice. Leaseholders say not part of the cost of valuation already prepared, offers Nil. Outside S.33 (d). The work is preparation for the negotiation and or tribunal presentation. Outside S.33 (d): **£Nil.**
48. **Item 26: (a)** Landlord seeks 1 unit for the timetable, already covered above says applicant, Nil. Administration: **£Nil.**

49. **Item 27: (e)** Landlord seeks 1 unit for a further review of title and basic details for draft TP1. Applicant comments as Item 24, Nil. Work was done well before terms settled, yet a TP1 was being drafted ? No evidence of same and in any case not reasonable. **£Nil.**
50. **Item 28: (d)** Landlord seeks 6 units at £390/hr. Applicant says this is part of the preparation for the activity of negotiation. Not recoverable under S.33. Nil. **£Nil.**
51. **Item 29: (a) & (d)** Landlord seeks 5 units at £235/hr. Applicant - as item 28 above, Nil. **£Nil.**
52. **Items 30 - 53: (a) & (d)** Landlord seeks more costs for background to and preparation for, negotiation of the value (valuation already prepared by valuer) or to launch a new challenge on the original notice of claim; or to review, redraft earlier advice or actions by the lawyers for the landlord; or preparation of case for Tribunal representation; or for work after the notice of claim had been withdrawn. None of these are recoverable under S.33. Nil. Items No.50, 51, 52, 53 are after the application to withdraw is filed. No date of Tribunal decision granting consent to withdraw is provided. **£Nil.**
53. **Application to Withdraw** filed on 16 February 2024 by leaseholders.
54. **Item HMLR fees: (b)** Landlord sought £111 plus VAT but since settled by the parties: **No jurisdiction.**
55. **Item Surveyors Fees: (d)** landlord seeks £2850 plus VAT. Applicant offers £1750 plus VAT. The Tribunal is content with the invoice filed and presumably paid for the valuation of the relevant interests for the leaseholders at £2100 including VAT as evidence of the reasonable cost. The landlord declines to provide a receipted invoice from their valuer, or the initial invoice, or a copy of the valuation report for the landlord. The valuation prepared for the purpose of preparing and serving the counter notice is allowable. Valuation work (and all negotiations) after this service is not allowable under S.33. The Tribunal is prepared to give the landlord the benefit of the doubt and determine at the figure of £2100 including VAT as proposed by the leaseholders, based on their fee for their valuation as a comparable guide. **£2100 (including VAT).**

### **Decision Summary**

56. The Tribunal determines landlord's legal costs under s.33 at **£2932** and valuation fee of **£1750**, plus VAT. The parties have agreed HMLR costs.

**Name: N. Martindale**

**Date: 1 April 2025**

## **Appendix 1**

### **Leasehold Reform, Housing and Urban Development Act 1993**

#### **S33.— 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 [the appropriate tribunal] 1 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.

## **Appendix 2 – Rights of Appeal**

1. 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.
2. 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.
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 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.