



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

**Case Reference** : LON/00BH/OC9/2015/0331

**Property** : 2 Mornington Road  
London E11 3BE

**Applicant** : Landway Limited

**Representative** : Cavendish Legal Group

**Respondent** : Michael Arthur Tiplady, Amanda  
Sophia Tiplady and Michelle  
Yvonne Pitt

**Representative** : Kennard Wells

**Type of Application** : Determination of Costs to be paid  
under S33(1) Leasehold Reform  
Housing and Urban Development  
Act 1993 – Application under  
S91(2)(d) of the Act

**Tribunal Members** : P M J Casey MRICS

**Date and venue of  
Hearing** : 20 October 2015  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 30 October 2015

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the applicant landlord's costs for which the respondents are liable under the provisions of S33(1) of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) are as follows:

Legal fees	£700
Courier fees	NIL
Valuers fees	£1,140 including VAT

- (2) The tribunal makes the determinations as set out under the various headings in this decision

## **The application**

1. The applicant seeks a determination pursuant to S91(2) of the Act of its reasonable costs under the provisions of S33 of the Act.
2. Following the Tribunal's directions dated 4 August 2015 the applicant's solicitors, Cavendish Legal Group, submitted a hearing bundle to enable the Tribunal to determine the application on the papers. The bundle was considered by the Tribunal on 20 October 2015. Neither the applicant nor the respondents asked for an oral hearing.

## **Background**

3. On 23 June 2014 a notice under S13 of the Act claiming the right to collectively enfranchise was served on the applicant landlord by the leaseholders of the two flats at 2 Mornington Road E11 3BE in their capacity as the nominee purchaser.
4. Cavendish Legal on behalf of the applicant served the landlord's S21 Counter Notice on the nominee purchaser on 26 August 2014. Whilst the notice admitted that the nominee purchaser was on the relevant date entitled to exercise the right to collectively enfranchise in relation to the specified premises it went on to say "it is disputed by the reversioner that the S13 Initial Notice is invalid (sic). The reason is because the Initial Notice has not been signed personally by the qualifying tenant, nor is there a plan attached to the Initial Notice, nor is there (in terms of demise and proposed premiums) differentiation between the "Specified Premises" and the "Appurtenant Property" as required by S13(3)". The notice went on to reject the proposed purchase price of £14,622 proposing instead a price of £18,000 for the Specified Premises and £500 for the Appurtenant Property.

5. On 20 February 2015 Kennard Wells, a firm of solicitors, on behalf of the nominee purchaser purported to serve a further S13 notice on the applicant and copied this to Cavendish Legal under cover of a letter dated 24 February and these documents were included in the hearing bundle. Cavendish Legal were not instructed in respect of this second S13 notice and there is no indication in the bundle what has transpired in relation to it. In response to queries raised in a letter from the tribunal dated 5 October 2015 Cavendish Legal explained that the first notice was deemed to have been withdrawn under S29(2) of the Act as no application was made to the tribunal with the time limited specified therein namely 26 February 2015 being six months after the first Initial Notice was served. They only sought costs in relation to that first notice.
6. No agreement on the applicant's S33 costs following the deemed withdrawal was reached and so application was made to the Tribunal on 31 July 2015.

### **The law**

7. Section 33(1) provides that the nominee purchaser shall be liable 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:
  - (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 of any such interest;
  - (c) Making out and furnishing such abstracts and copies as the nominee purchase may require;
  - (d) Any valuation of any interest in the specified premises or other property;
  - (e) Any conveyance of any such interest;"

Section 31(2) however provides:

"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.”

While Section 31(3) says:

“Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (...) the nominee purchaser’s liability under this section for the costs incurred by any person shall be a liability for costs incurred by him down to that time.”

### **The evidence**

8. The tribunal’s directions required the applicant to provide a schedule of costs sufficient for a summary assessment and identifying the basis for charging legal and/or valuation costs. If these were assessed by reference to hourly rates details were to be given of fee earners/case workers, hourly rates applied, time spent and disbursements. The schedule should also identify and explain any unusual or complex features of the case. In addition copies of invoices substantiating the claimed costs were requested and also copies of any documents relied on.
  
9. What has been included in the bundle is an unsigned simple schedule identifying the fee earner (who did all the legal work) as Jonathan Frankel, a Grade A solicitor with a charge out rate of £200 per hour. The work claimed to be undertaken is set out as follows:

<b>Description</b>	<b>Fee Earner</b>	<b>Hours</b>	<b>Cost</b>
Letters out to Tenants’ solicitors x 16	JF	1.6	£310
Letters out to Freeholder x 19	JF	1.9	£380
Letters out to First Tier Tribunal x 2	JF	0.2	£40 – See later
Considering Valuation Report	JF	1.0	£200
Preparing Counter Notice	JF	2.5	£500
Application to First Tier Tribunal	JF	0.5	£100 – See later
			£1,540.00
The total claim included, in addition			
	Special Delivery disbursement fee		£5.82
	Valuer’s Costs including VAT		£140.00
For a total of			£2,685.82

The Valuer’s Costs are supported by an invoice from Strettons, a firm of Chartered Surveyors in the sum of £950 plus £190 VAT total £1,140, clearly, Mr Frankel’s schedule omitted a figure. The invoice addressed to Landway Ltd detailed the work carried out including inspection and measuring up the premises, local authority enquiries, research into comparables and compilation of the valuation report.

10. For the respondent Kennard Wells submitted a brief statement in reply dated 25 August 2015. In it they do not dispute the applicant's entitlement to costs in relation to the original S13 notice nor the grade of solicitor carrying out the work or the hourly charge out rate. They do however question the volume and resulting charges for correspondence and the time claimed considering the valuer's report preparing the counter notice and making the application to the tribunal. They also point out no reason for the special delivery disbursement being paid was given and say that the valuer's fee is too high and should be no more and £550/£650 plus VAT.
11. The applicant has subsequently accepted that S33(5) precludes the claim for the costs of the application to this tribunal which presumably include the separate item for correspondence.
12. Despite the very clear directions however no copy of any invoice from Cavendish Legal to the applicant has been provided nor any statement to the effect that the amount claimed has or will be paid. No details have been given as to complexity, etc to justify the enormous volume of correspondence claimed in what on the face of it is a straight forward case with no significant difference between the parties' views on the purchase price. In the absence of any such explanation the claim for correspondence is reduced to 10 letters out to tenants/freeholder or £200. The hour claimed reading the valuation report is clearly excessive as is the 2½ hours preparing the counter notice. That said no amount is claimed for consideration of the S13 notice and establishing whether or not there is any right to enfranchise work which the counter notice makes clear was undertaken. Doing the best that can be done on the evidence the maximum sum that it would be reasonable to allow in addition to the correspondence is £500 being 2½ hours at £200 per hour to encompass consideration of the claim the preparation of the counter notice and perusal of the valuation report. As no information is given as to why a special delivery disbursement was incurred this is disallowed.
13. So far as the valuer's fee is concerned the sum claimed, £950 plus VAT, is regarded as reasonable for the work carried out by a reputable firm of Chartered Surveyors as detailed in the invoice. However, it would not be reasonable for the applicant to seek reimbursement of a second fee should the matter proceed in the near future on the basis of the further S13 notice.

**Name:** Patrick M J Casey

**Date:** 30 October 2015