



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

Case reference : **LON/00BG/LCP/2021/0002**

**HMCTS code
(paper, video,
audio)** : **V:VIDEOREMOTE**

Property : **Birkdale, Slate, Langan, Wessex, Elite,
Edgemere & Vale House, St. Anne's
Street, London E14**

Applicant : **Avon Ground Rents Limited**

Representative : **Mr Justin Bates, counsel**

Respondents : **(1)Canary Gateway (Block A) RTM Co
Ltd
(2)Canary Gateway (Block B) RTM Co
Ltd**

Representative : **Mr Mark Loveday, counsel**

Type of application : **For the determination of the liability to
pay and quantum of costs in respect of a
right to manage application**

Tribunal members : **Judge Tagliavini
Mr C Gowman BSc**

**Venue & date of
hearing** : **10 Alfred Place, London WC1E 7LR
30 September 2021**

Date of decision : **5 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V: VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable. The documents that I was referred to are in bundles of 249 and 1764 pages, the contents of which the tribunal has noted.

Decisions of the tribunal

- (1) The respondents are liable to pay the applicant's costs that arose as a consequence of the service of the notice seeking a 'right to manage,' including the reasonable litigation costs incurred in the First-tier Tribunal and Upper Tribunal.
 - (2) The tribunal determines that the costs payable by the respondents to the applicant are £42,540.03 (plus VAT).
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The application

1. This is an application made under the provisions of section 88(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') seeking a determination by the tribunal of the quantum of costs that are payable by the respondents to the applicant.

Background

2. By reason of the decision of the Upper Tribunal [2002] UKUT 0358 (LC) the applicant successfully appealed against the decision of the First-tier tribunal *LON/OOBG/LRM/2019/012 & 0013* which had erroneously determined the respondents were entitled to acquire the 'right to manage' (RTM) the subject premises at Elite, Edgemere & Vale House, St. Anne's Street, London E14 (Block A) and Birkdale, Slate, Langan, Wessex, St. Anne's Street, London E14 (Block B). Therefore, the applicant now makes an application for costs under the provisions of section 88(4) of the 2002.

The issues

3. The applicant contends (i) that it is entitled to not only 'the pre litigation costs'* but also the litigation costs incurred in both the First-tier Tribunal and the Upper Tribunal and seeks (ii) quantification of those costs.

**Pre-litigation costs in this context refer to the costs that were incurred as a consequence of a claim notice having been served by the respondent and prior to the litigation in the tribunal.*

4. The respondents (i) accept that the applicant is entitled to 'pre-litigation costs' subject to their reasonable quantification by the tribunal and contends (ii) there is no liability to pay the applicant's litigation costs incurred in the First-tier Tribunal and Upper Tribunal in any amount or in the alternative (iii) a reasonable amount.

The applicant's evidence and submissions

5. In respect of the quantification of costs the applicant provided the tribunal with Schedules of Costs (summary assessment) and supporting evidence in which a total of £59,581.45 (plus VAT) was claimed made up of the following sums:
 - (i) £9,230.71 (plus VAT) – pre litigation costs
 - (ii) £37, 135.17 (plus VAT) in the First-tier tribunal
 - (iii) £13,215.57 (plus VAT) in the Upper Tribunal (UTLC)
6. Mr Bates told the tribunal that the costs were 'more or less' divided equally between Block A and Block B although an adjustment had to be made to reflect the slightly greater number of premises in Block B. In support of the issue of quantification, the applicants relied upon the Applicant's Statement of Response dated 14 June 2021 and a Statement in Response provided by Cathy Collins on behalf of the Respondents dated 28 May 2021 and the two bundles of documents which included invoices and other documents in support of its claim for costs.
7. Mr Bates submitted that section 88(1) of the 2002 Act gave the applicant a statutory right to costs, including the litigation costs; *Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd [2014] UKUT 6 (LC)*. Mr Bates submitted that the respondents' reliance on the Court of Appeal decision in *Leech Homes Limited v Northumberland County Council [2021] EWCA Civ 198* was ill conceived and irrelevant to the current application.

The respondent's submissions

8. The respondents relied upon a Statement in Response dated 28 May 2021. At the hearing, Mr Loveday submitted that the tribunal's power to award costs arose from section 29 of the Tribunal Courts and Enforcement Act ('the 2007 Act'). This section had to be read together with rule 10 of the Upper Tribunal (Lands Chamber) Procedure Rules 2010 and rule 13 of The Tribunal (First-tier Tribunal) Procedure Rule (Property Chamber) Rules 2013.
9. In his submissions, Mr Loveday relied on the Court of Appeal decision in *Leech Homes*, in which the cost shifting powers of section 29 of the 2007

Act were considered in the context of an application for compensation under s.18 Land Compensation Act 1961. In *Leech Homes* it was held that the UTLC 'does not have the power' to make a costs order in a 'CAAD' Appeal because there is no specific power under rule 10 to do so.

10. Mr Loveday also took issue with the quantum of costs sought by the applicant. These objections were detailed in the Respondent's Statement in Response to Applicant's Claim for Costs signed by Charlotte Collins for the respondents and dated 28 May 2020. The objections raised by the respondent sought to reduce the costs by a sum in the region of £25,000 (plus VAT).
11. Both parties agreed that any costs awarded should be on a reasonable costs' basis and not an indemnity basis. Similarly, both counsel agreed that were litigation costs to be determined as payable, the tribunal had jurisdiction to determine the reasonableness of the costs incurred in both the First-tier Tribunal and the UTLC.

The tribunal's decision and reasons

12. The tribunal does not accept the arguments raised by Mr Loveday on behalf of the respondents and finds that the applicant is entitled to its costs by reason of the provisions of section 88(1)-(4) of the 2002 Act. The tribunal finds that the respondents are not assisted by *Leech Homes* as this case concerned an entirely different jurisdiction concerning the payment of compensation. Consequently, the tribunal finds the applicant is entitled to both its pre-litigation and litigation costs of both the First-tier Tribunal and the UTLC.
13. In determining the quantum, the tribunal had regard to provisions of s.88 of the Act which state,

(1)A RTM company is liable for reasonable costs incurred by a person who is—

(a)landlord under a lease of the whole or any part of any premises,

(b)party to such a lease otherwise than as landlord or tenant, or

(c)a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

in consequence of a claim notice given by the company in relation to the premises.

(2)Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as

reasonable only 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)A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4)Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal.

14. In considering the reasonable quantum of the applicant's costs the tribunal also took into account the applicant's objections set out in paragraphs 5 (i) to (viii) and the concession at paragraph 6 stating that the 'The Respondents do not take issue with any costs other than those identified above.....'
15. The tribunal largely accepts the objections made by the respondent and finds that the costs appear to be excessive in parts, and are on balance, likely to contain elements of duplication in respect of the work carried out for Block A and Block B. Further, the tribunal accepts the respondents' assertion that no provision was made for the use of expert in the Directions of the tribunal and therefore disallows all fees claimed in respect of expert witnesses. Similarly, the tribunal disallows the fees of the managing agents (Y&Y Management) as these do not amount to legal costs.
16. Therefore, adopting the respondents' submissions at paragraph 5 of the Statement of Charlotte Collins, the tribunal reduces the costs sought by the respondent in the following sums:
 - (i)
 - (ii) £2,722.50 (plus VAT)
 - (iii) £3,630.00 (plus VAT) – time spent on written and telephone correspondence
 - (iv) -----
 - (v) £7,210.17 (plus VAT) – expert witnesses fees
 - (vi)
 - (vii) £3,478.75 (plus VAT) – Y&Y managing agent fees
17. Therefore, the tribunal reduces the claim for costs in the total sum of £17,041.42 (plus VAT). Therefore, the respondents are liable to pay the applicant costs in the sum of £42,540.03.

Name: Judge Tagliavini

Date: 5 October 2021

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).