



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

Case reference	:	MM/LON/00AG/OC9/2022/0137 P: PAPERREMOTE
Property	:	Embassy House, West End Lane, London NW6 2NA
Applicants	:	(1) Christopher Ferrier Williams (2) Elizabeth Ferrier Toomey (3) Paul Anthony Austin
Representative	:	Fladgate LLP
Respondents	:	(1) Embassy House Freehold Limited (2) The participating leaseholders named in the schedule accompanying the Tribunal application
Representative	:	Gregory Abrams Davidson Solicitors
Type of application	:	Section 33(1) of Leasehold Reform, Housing and Urban Development Act 1993 – Reasonable Costs
Tribunal member(s)	:	Judge Donegan
Date of paper determination	:	15 November 2022
Date of decision	:	15 November 2022

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined on paper. The documents that I was referred to are in a bundle of 260 pages, the contents of which I have noted.

Decision of the Tribunal

The costs payable by the respondents under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') are £21,600 (Twenty-One Thousand, Six Hundred Pounds).

The background and procedural history

1. These proceedings arise from a collective enfranchisement claim for Embassy House, West End Lane, London NW6 2NA ('the Property'), under the 1993 Act. The respondents are the freeholders of the Property, which is a purpose-built block comprising 71 flats and common parts. There are also 11 garages and communal grounds.
2. On or about 26 January 2022 various leaseholders at the Property served a notice under s.13 of the 1993 Act ('the Initial Notice'), claiming the freehold of the Property. The first applicant, Embassy House Freehold Limited, is the nominee purchaser named in the Initial Notice. The other applicants are the participating leaseholders who were party to that notice.
3. The Initial Notice proposed £1,428,000 for the freehold interest in the "*specified premises*" and £2,000 for the remainder of the Property, as specified at paragraph 2 of that notice. The respondents served a counter-notice on or about 07 April 2022, admitting the participating leaseholders had, on or about 26 January 2022, the right to collective enfranchisement for the Property without prejudice to their primary contention that the Initial Notice was invalid. The counter-notice proposed £3,806,000 for the freehold interest in the Property and £16,000 for the property specified at paragraph 2 of the Initial Notice.
4. On 04 May 2022 the respondents' solicitors wrote to the applicants' solicitors, acknowledging that the Initial Notice was invalid. The applicants' solicitors wrote to the respondents' solicitors on 05 and 09 May 2022, providing details of the costs claimed under s.33(1) of the 1993 Act. The parties have been unable to agree these costs and the Tribunal received an application to determine these costs dated 29 July 2022. Directions were originally issued on 01 August 2022 and the application was allocated to the paper track, to be determined without an oral hearing. At the respondents' request some of the deadlines in the directions were extended. Amended directions were issued on 09 September 2022 but the case remained allocated to the paper track. Neither party has objected to this allocation or requested an oral hearing. The paper determination took place on 15 November 2022.
5. The applicants' solicitors filed a digital determination bundle in accordance with the directions. This includes copies of the Tribunal

application, and both sets of directions, the documents from the underlying enfranchisement claim, the applicants' costs statement, the respondents' response, the applicants' reply, various invoices, relevant correspondence and the applicants' legal submissions, as drafted by Robert Marvin KC. I took account of all these documents when assessing the costs payable under s.33(1) of the 1993 Act.

6. The relevant legal provisions are set out in the appendix to this decision.

Assessment

7. I have summarily assessed the applicants' costs and attach a copy of their reply with my decisions on the disputed items in red type. The sums allowed are:

Legal costs

Attendances on applicants

Grade A – 0.4 hours @ £400 per hour	£160.00
Grade B – 3.7 hours @ £350	£1,295.00

Attendances on respondents

Grade A – 0.6 hours @ £400	£240.00
Grade B – 0.2 hours @ £250	£50.00

Work done on documents

G Whitney (Grade A) – Nil	£00.00
A Gross (Grade A) – 0.1 hours @ £400	£40.00
L Bowler (Grade A) – 4.2 hours @ £400	£1,561.00
C Carter (Grade A) – 1 hour @ £400	£400.00
L Bowler (Grade B) - 6.5 hours @ £350	£2,275.00
A Tapp Scotting (Grade D) – 6 hours @ £140	£840.00
E Goldie-Scott (Grade D) – Nil	£00.00
L McArdell (Grade D) – 1 hour @ £140	<u>£140.00</u>

£7,001.00

VAT £1,400.20

Valuation fee £11,000.00

VAT £2,200.00

Total **£21,601.20**

The Tribunal has rounded this figure down to £21,600.

Next steps

8. The determination bundle also includes a further costs statement from the applicants dated 14 October 2022, relating to the costs of the Tribunal application. It appears the applicants are considering a separate costs application under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Any application for Rule 13 costs must be made in accordance with Rule 13(4) and (5).

Name: Tribunal Judge Donegan **Date:** 15 November 2022

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).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 1 The right to collective enfranchisement

- (1) This chapter has effect for the purpose of conferring on qualifying tenants of flats contained in premises to which this Chapter applies on the relevant date the right, exercisable subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf -
- (a) by a person or persons appointed by them for the purpose, and
 - (b) at a price determined in accordance with this Chapter;
- and that right is referred to in this Chapter as “the right to collective enfranchisement”.
- (2) Where the right to collective enfranchisement is exercised in relation to any such premises (“the relevant premises”) -
- a) the qualifying tenants by whom the rights is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and
 - (b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.
- (3) Subsection (2)(a) applies to any property if at the relevant date either –
- (a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or
 - (b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).
- (4) The right of acquisition in respect of the freehold of any of such property as is mentioned in subsection (3)(b) shall, however, be taken to be satisfied with respect to that property, if on the acquisition of the relevant premises in pursuance of this Chapter, either –
- (a) there are granted by the person who owns the freehold of that property –
 - (i) over that property, or
 - (ii) over any other property,such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly as may be the same rights as those enjoyed in relation to that property on the

relevant date by the qualifying tenant under the terms of his lease; or

- (b) there is acquired from the person who owns the freehold of that property the freehold of any other property over which any such permanent rights may be granted.
- (5) A claim by qualifying tenants to exercise the right to collective enfranchisement may be made in relation to any premises to which this Chapter applies despite the fact that those premises are less extensive than the entirety of the premises in relation to which those tenants are entitled to exercise that right.
- (6) Any right or obligation under this Chapter to acquire any interest in property shall not extend to underlying minerals in which that interest subsists if –
- (a) the owner of the interest requires the minerals to be excepted, and
 - (b) proper provision is made for the support of the property as it is enjoyed on the relevant date.
- (7) In this section –
- “appurtenant property”, in relation to a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the flat;
- ...
- “the relevant premises” means any such premises as are referred to in subsection (2).
- (8) In this Chapter, “the relevant date”, in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13.

Section 13 Notice by qualifying tenants of claim to exercise right

- (1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving notice of the claim under this section.
- (2) A notice given under this section (“the initial notice”) –
- (a) must
 - (i) in a case to which subsection 9(2) applies, be given to the reversioner in respect of those premises; and
 - (ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient; and
 - (b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which –
 - (i) ...

- (ii) is not less than one-half of the total number of flats so contained;

...

Section 21 Reversioner's counter-notice

- (1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g).
- (2) The counter-notice must comply with one of the following requirements, namely –
 - (a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;
 - (b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;
 - (c) contain such a statement as is mentioned in paragraph (a) or (b) above but stat that an application for an order under subsection (1) of section 23 is to be made by such an appropriate landlord (within the meaning of that section) as is specified in the counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises.

...

Section 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).
- (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 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

- 13.-** (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 and land drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee

paid by the other party which has not been remitted by the Lord Chancellor.

- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs –
 - (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days of the date on which the Tribunal sends –
 - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for cost against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by –
 - (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph 7(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply. The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.
- (9) The Tribunal may order and amount to be paid on account before the costs or expenses are assessed.