



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

Case Reference : LON/OOAW/OC9/2015/0067

Property : 23 Stafford Terrace, London
W8 7HF

Applicants : Mr P Bradshaw, Ms P
Bradshaw, Mr L Trajer and Ms
L Trajer (nominee purchasers)

Representatives : Mapletoft & Co, solicitors, with
valuation advice from James
Flynn Commercial Limited,
chartered surveyors

Respondents : The Trustees of the Phillimore
1964 Settlement

Representatives : Forsters LLP, solicitors with
valuation advice from Savills,
chartered surveyors

Type of Application : An application for the
determination of the liability
of the applicants for the
respondent's costs made
under section 33 of the
Leasehold Reform, Housing
and Urban Development Act
1993.

Tribunal Members : Professor James Driscoll
(Judge) , Duncan Jagger
MIRCS

Dates of Hearing : The tribunal met on 8 April
2015 to make a determination
by considering the papers and
without an oral hearing.

Date of Decision : 8 April, 2015

DECISION

The Decisions summarised

1. The tribunal determines that the applicants are to pay the respondents the sum of £6,200 towards their legal fees and the sum of £2,800 in respect of their valuation fees. Both sums are exclusive of VAT. The total sum (which is £10,800 inclusive of VAT), payable as costs under section 33 of the Act, is to be paid by the applicants to the respondents by 30 April 2015.

Background

2. This is an application for the determination of the landlord's costs following an abortive enfranchisement claim. It is made under section 33 of the Act. The application was received by the tribunal on 29 January 2015.
3. The applicants are leaseholders of flats in the premises. In a notice dated 27 November 2013, acting together as nominee purchaser, they claimed the freehold to the premises from the freeholders, the Trustees of the Phillimore 1964 Settlement. A copy of the notice (given under section 13 of the Act) was also given to the intermediate leaseholder. They proposed to pay a premium of £57,490 for the specified premises.

4. In response, the solicitors acting for the Trustees gave a counter-notice under section 21 of the Act admitting the entitlement to the freehold but making counter-proposals as to the premium to be paid. This notice was dated 4 February 2014. It made a counter-proposal that the premium to be paid for the specified premises should be the sum of £659,913.
5. In a covering letter the solicitors (dated 4 February, 2014) challenged the validity of the section 13 notice as it failed to refer to the acquisition of additional freehold land, namely the garden, and it also failed to propose a price for its acquisition. They suggested that as the section 13 claim notice was invalid that it should be withdrawn.
6. Later those advising the nominee purchasers accepted that the notice was invalid though it appears that it took them several months to make this admission.

The costs application

7. Those advising the landlords now seek their costs under section 33 of the Act (as required by section 28(4) where a notice is withdrawn). Following the receipt of the application the tribunal gave directions. The tribunal proposed that the costs issue be determined by a consideration of the papers without an oral hearing though the parties were given the option of a hearing.
8. A bundle of documents was prepared on behalf of the nominee purchasers. The tribunal met on 8 April 2015 to make a decision. We found that the documentation was incomplete. However, the tribunal was later sent a copy of the counter-notice with a covering letter and related documents including a copy of the valuation calculation prepared by the landlord's valuers.
9. Forsters LLP who act for the landlord claim the sum of £8,255.92 for their fees in advising on the claim. They also claim the sum of £3,600 in respect of their valuer's fee. Mapletoft the solicitors for the nominee purchasers challenge these fees. The respective positions of the parties are set out in Forster's letter of 20 February 2015 and 17

February 2015. Attached to Forster's letter is a very detailed schedule of their costs.

Our determination

10. In summary, section 33 of the Act provides that the nominee purchaser is liable to pay the reasonable costs of investigating the claim, a valuation of the interests to be acquired and the conveyance. (This is to be paid where a notice is withdrawn - see: section 28(4) of the Act).
11. However, section 33(2) states such costs shall only be reasonable if the landlord might reasonably be expected to have been incurred them if the landlord was personally liable for them. As the authors of *Hague: Leasehold Enfranchisement* (6th ed. 2014) put it 'This sensible measure is designed to prevent the landlord from inflating his costs merely because the tenants are paying them' (at 28-31).
12. A landlord who receives a claim to purchase the freehold is perfectly entitled to appoint professional advisers in the expectation that the claimant leaseholders will have to bear its reasonable costs. Landlords are justified in appointing advisers with expertise and the appropriate experience. Leasehold enfranchisement is notable for its complications and advisers will be keenly aware of the almost constant number of court and tribunal cases on disputes over entitlement, valuation and procedural issues. In recent years advisers will have noted decisions of the Supreme Court, the Court of Appeal, the High Court concerning these claims.
13. But just as a landlord is entitled to appoint expert advisers, one expects such an advisor to act more expeditiously and efficiently than a non-specialist.
14. It with these preliminary observations in mind that we examine the costs claimed. As this consideration is based solely on the papers filed and without the benefit of oral representations, or the opportunity for us to question the respective advisers, we are only able to conduct a summary assessment.

15. First, we do not agree with the suggestions made by Mapletoft that this was a straight forward claim. The claim involved leaseholders and an intermediate leaseholder as well as the landlord. As Mapletoft eventually accepted there were serious deficiencies in the claim notice. As the landlord's valuation calculation confirms, one of the issues is whether there is a development value from the opportunity for the nominee purchaser to convert the premises into a house once they have acquired the freehold.
16. We did not find the handwritten comments made by Mapletoft on the schedule of costs particularly helpful. A detailed summary of their objections (as proposed in our directions) might have assisted us in making our determination.
17. We note that the landlord's solicitors have recorded some 17.8 hours in undertaking this work. Some of this is to an extent duplicated where the firm's partners were involved. Based on our reading of the papers filed and our own professional knowledge and experience we do not consider that a landlord would expect to pay a bill representing nearly 18 hours work in this case. Doing the best we can, and without the benefit of detailed comments from those advising the nominee purchaser, we consider that the reasonable legal costs that are recoverable under section 33 of the Act is the sum of £6,200 (exclusive of VAT).
18. Turning to the landlord's valuers fees, we first repeat the point that the landlord is perfectly entitled to appoint experienced advisors as they have done in this case. We note that the valuers advising the nominee purchasers charged a fee of £2,000 (exclusive of VAT). Again applying the qualification in section 33(2) of the Act we have concluded that a landlord would expect to pay a lower fee than the one charged. On the basis of our consideration of the papers and relying on our professional knowledge and experience we have concluded that a reasonable fee for the valuation in this case is the sum of £2,800 exclusive of VAT.

19. In summary, we determine that the nominee purchaser must pay the sum of £9,000 to the landlords in respect of their costs. The total sum including VAT amounts to £10,800. This should be paid by 30 April 2015.

James Driscoll and Duncan Jagger

9 April, 2015