

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

**Sections 33 & 91(1)(b) of the Leasehold Reform, Housing and Urban Development
Act 1993 (“the Act”)**

Case Number:	CHI/43UL/OCE/2007/0073
Property:	Farleigh Ramsden Road Godalming Surrey GU7 1QE
Applicant:	Farleigh Management Association Limited
Respondents/Freeholders:	Larissa Robyn Conaway Merryn Elizabeth Conaway Alexander Warren Conaway
Appearances for the Applicant:	Michael Packer Solicitor
Appearances for the Respondents:	Alexander Warren Conaway
Date of Hearing	4th December 2008
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr A MacKay FRICS (Valuer Member) Ms J Dalal (Lay Member)
Date of the Tribunal’s Decision:	16th December 2008

DECISION

1. The Tribunal has determined that the costs payable by the Applicant to the Respondents is the sum of £5,322.75 inc of vat at 17.5% payable no later than the 30th January 2009

PRELIMINARIES

2. This application is for a determination of costs payable under section 33 of the Act following the successful conclusion of a claim collectively to enfranchise made on behalf of the Applicant under the provisions of the Act. At the time of the application the Respondents were the current owners of the freehold and the landlords under the leases of the flats in the Property, which contains five flats.
3. The Applicant is the nominee purchaser acting on behalf of the three leaseholders of the flats who served notice collectively to enfranchise under Section 13 of the Act on the 11th May 2007. The landlord / Respondents to this application served a counter notice under section 21 on the 11th July 2007. Under the Act the Respondents are known as the reversioner.
4. Originally there was a dispute between the parties as to the extent of the land that could be legitimately claimed by the Applicant. In particular the Respondents contested the right of the Applicant to acquire a small strip of land between the Property and the reversioners' land, which was a vacant plot. There was also a dispute as to whether the car parking area in front of the Property should be leased to the reversioner in the lease back of a flat retained by them. Eventually agreement was reached on these two points without a hearing by the Tribunal.
5. The parties agreed a figure of £77,000 as the price payable for the freehold of the Property subject to but with the benefit of a long lease of the flat to be retained by the reversioner. Under section 33 of the Act the Applicant is also liable to pay the Respondents reasonable costs. The parties have not agreed on the amount of the costs which are payable. This has led to the application for a determination of those costs, which the Tribunal has jurisdiction to make under section 91(2)(d) of the Act.

THE DETERMINATION

6. Under section 33(1) of the Act the nominee purchaser is liable for the reasonable costs incurred by the reversioner in the enfranchisement and the wording of this section is as follows: -

(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 a leasehold valuation 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.

7. Following the application for a determination the Tribunal gave directions on the 29th September 2008. In accordance with the Tribunal's directions the Respondents solicitors filed a bundle of papers on the 15th October 2008. These included

- a. a copy client care letter from the Respondents solicitors,
- b. a costs breakdown which comprised of computerised time records sorted by fee earner which ran to some 35 pages of entries together with a further 10 pages of fee earner time summaries .
- c. copies of invoices covering the disbursements claimed.

8. The total amount of fees said to be due, as notified by the Respondent's solicitors as at the 17th January 2008, amount to £22,133.04 inclusive of vat.
9. The Tribunal also directed that the Applicant send to the Respondents a detailed statement or points of dispute and this was filed with the Tribunal within the time limit prescribed by the Directions.
10. According to the Applicant the Respondents had not complied with the Directions as they had failed to provide a copy of the relevant professional guidelines and had failed to provide full details of the work actually carried out and the dates on which it was carried out. They alleged that the computerized printout gave a wholly inadequate narrative. Therefore for the majority of the costs claimed, the Applicant was unable to assess whether the costs claimed were recoverable pursuant to section 33 of the Act and whether a reasonable period of time was spent in recoverable tasks. The Applicant suggested that the Respondents should have provided a detailed bill of costs giving details of the work carried out in this matter and stating how all costs claimed were recoverable pursuant to section 33 of the Act. Because of this disregard, they invited the Tribunal to dismiss the application and find that no costs were payable by the Applicants.
11. At the hearing, the Respondents were represented by Alexander Conaway one of the Respondents. He explained that the family could no longer afford a solicitor and that he would be representing himself and his two sisters. As he was a lay person he was not in a position to comment on the individual entries in the computerized timesheets but he was satisfied that all the work carried out by his solicitors was necessary. The directions had not provided for a detailed bill of costs to be filed and therefore there had been no breach of the directions by his solicitors
12. He explained that there were a number of complicated circumstances and therefore his family needed senior resources throughout. This included instructing specialist lawyers, a specialist barrister and also a specialist valuer. The complicating circumstances were the car parking issue and also whether a strip of land adjoining the property and his family's vacant plot should be included. Further complications arose because the Applicants continually used delaying tactics. He also contended that there were numerous queries by the Applicant, all of which needed replying to by his solicitors to enable progress to be made.
13. The Tribunal first considered the request made by the Applicant that this application be dismissed because the Respondents had failed to comply with the Directions. The Tribunal rejected this request because it found that the Directions had been substantially complied with. Whilst it agreed with the Applicant that the content of the information provided was unsatisfactory, the quality of the content was not so poor as to amount to a failure to comply.
14. The difficulty that the Tribunal faced, however, was that it was not possible to determine from the information provided by the Respondents what costs were properly recoverable and what costs were not. This was because the time sheets did not contain adequate detail of what work had been carried out by reference to recoverable items under section 33 of the Act. By way of example narratives in the computer readouts were stated to be "drafting" "letters out" "letters in" "perusing documents" "emails" etc. These descriptions are of a generic nature only and too vague to be relied upon by

the Tribunal. No attempt had been made by the solicitors to cross refer the time entries to steps taken under the Act which were recoverable under Section 33.

15. In these circumstances the Tribunal decided that it had no option other than to stand back and assess the recoverable costs in the round drawing upon its own collective experience and knowledge of the time usually taken to complete matters of this kind and complexity.
16. In reaching its determination the Tribunal noted first that the amount claimed, namely £22,133.04 is only a little short of 30% of the total premium payable for the freehold at £77,000 which in their opinion was an extraordinarily high percentage. In the Tribunal's experience this percentage was unheard of and in the absence of unusually complicated factors the Tribunal would expect in very general terms to see a percentage in the order of 5%.
17. The Tribunal considered the documents relating to the enfranchisement claim. Whilst there was a dispute over the land to be enfranchised, in particular the car parking to the front of the property and a strip to the side of the property, the dispute appears to have been settled relatively early on during the currency of the claim. On this issue the Tribunal was faced with conflicting submissions. On the one hand the Respondents' case is that there were substantial complications, which led to the need for a "heavy weight and senior team" at every step of the transaction. On the other hand the Applicants say that there were no complicating factors and that the matter was routine throughout. On balance we accept the analysis of the Applicants. Looking at the papers we could find no evidence of what the complicating factors were and therefore the Respondents' submissions in this respect amount to little more than an unsupported view. There was no suggestion in the Respondents' counter notice that the Applicant was not entitled to collectively enfranchise and the Respondents' objection to the extent of the property to be included was later withdrawn. It is not unusual for there to be initial disputes over the extent of land to be included in the transfer but as we say this issue was resolved without a hearing. The Tribunal therefore found there to be no complicating factors relating to this claim which would be responsible for increasing the costs unduly.
18. The Tribunal also considered the hourly rates charged by the Respondents' solicitors who were based in Bristol. These ranged from £265 per hour for a partner down to £155 per hour for a junior solicitor. Although a small amount of the work was carried out at the rates of £265 and £155 per hour, the majority of work was carried out by a grade A fee earner at £220 per hour and a grade B fee earner at £185 per hour. It was submitted by the Applicant that the Respondents should only recover an hourly rate consistent with the current practice direction for the Bristol area which was £203 for a grade A fee earner and not the higher hourly rates charged by the solicitors as mentioned above.
19. The Tribunal considers that the practice direction in the Bristol area of £203 per hour for a grade A fee earner is within the band of what we would expect to find for this type of work. Coincidentally the figure of £203 falls midway between the charge out rates of the fee earners most used by the Respondents' solicitors at £220 and £185. The Tribunal therefore determines that £203 per hour is a reasonable figure to be applied when assessing the legal costs recoverable by the Respondents in this case.
20. As to the amount of time, the Respondents claim a total of 49.5 hours which the Tribunal considers to be excessive bearing in mind its finding that there were no unduly complicated circumstances. The Tribunal considers that a total of 10 hours should have

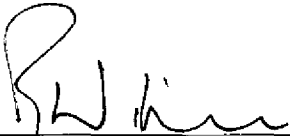
been sufficient to deal with all ‘notice related matters’ giving rise to a charge of £2,030. In addition a total of 7.5 hours should have been sufficient to deal with the conveyancing and other recoverable costs giving rise to a rounded down figure of £1500, which is the figure that we are prepared to allow.

21. Bearing in mind the lack of complicating factors, the Tribunal was at a loss to understand why the Respondents should have found it necessary to instruct not only specialist solicitors but also two barristers one of which was a QC. Neither of the two Counsels fee notes contained any helpful narrative of the work carried out nor was Mr Conaway able to assist. As a consequence the Tribunal could see no justification why the Applicant should be responsible for payment of any of the Counsels fees.
22. The Respondents also claim the cost of their valuers fees namely the fees of Best Gapp and Cassells, which are put at £4,012.50 inc of vat. The Respondents are of course entitled to payment of their reasonable costs of undertaking a valuation under the Act. But as the Applicant points out, their own valuers, Messrs Pier carried out the valuation on their behalf for a fee of £1,175 inc of vat. The Tribunal accepts the Applicant’s submission that a similar amount should be allowed for the Respondents’ valuers. Accordingly the Respondents valuers’ fees allowable under section 33 are determined at £1,175 inc of vat.
23. The Respondents’ solicitors have also charged £228.88 in respect of photocopying and conference call expenses. In the absence of any explanation from the Respondents’ solicitors the Tribunal could see no justification why the Applicant should be responsible for payment of any part of these disbursements.
24. Accordingly the Tribunal determines that the total costs payable by the Applicant to the Respondents is £5,322.75 made up as follows: -

	£		£
Notice costs	2,030.00 plus vat 17.5%	=	2,385.25
Valuation costs	1,000 plus vat at 17.5%	=	1,175.00
Conveyancing cost	1,500 plus vat at 17.5%	=	<u>1,762.50</u>
		TOTAL	£5,322.75

25. The Applicant also made an application for penalty costs of £500 to be awarded against the Respondents under paragraph 10 of section 12 of the Commonhold and Leasehold Reform Act 2002 on the grounds that the Respondents utterly disregarded the directions of the Tribunal.
26. This section enables the Tribunal to award penalty costs of up to £500 in circumstances where a party has in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The Tribunal found no evidence that the Respondents had acted in any such way. Contrary to the Applicant’s assertions, the Respondents did comply in all material respects with the directions although the quality of the information provided was poor. Moreover, Mr Conaway on behalf of the Respondents attended the hearing and endeavored to the best of his ability to assist the Tribunal in coming to its determination

on costs. This included telephoning his solicitors to obtain information and answering all the questions that the Tribunal put to him. The Tribunal therefore makes no order under this section.

Chairman 
R.T.A. Wilson

Dated 16th December 2008