FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UM/OCE/2020/0005/6
Property	:	Blocks 1-20 & 21-32, 7,9,11,13 Midhope Road Woking GU22 7UQ
Applicants	:	Claire Louise Cook and Sue Beesley
Representative	:	Claire Cook
Respondent	:	Loreinwood Limited
Representative	:	Mr Robert Brown, counsel instructed by Guillaumes LLP
Type of Application	:	Collective Enfranchisement : Section 24(1) Leasehold Reform and Urban Development Act 1993 (The Act)
Tribunal Member(s)	:	Judge D. R. Whitney Mr M Ayres FRICS
Date of hearing	:	10th and 12th February 2020
Date of determination	:	13th April 2021
Date of Rule 13 costs determination	:	25th August 2021

DETERMINATION

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Background

1. Two applications were made under section 24(1) of the Leasehold Reform Housing and Urban Development Act 1993 by the Applicant as the nominee purchaser seeking to collectively enfranchise the freehold of the Property. The Respondent was the same in respect of each notice. The two matters were joined together.

2. The hearing took place by CVP video platform. The hearing commenced on 10th February 2021 but could not be concluded in one day. The hearing resumed, again by CVP video with the same representatives on 12th February 2021. A decision was issued dated 13th April 2021.

3. By application dated 11th May 2021 the Respondent seeks an Order pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Applicants should pay the costs incurred by the Respondent. The basis of the application is that the Tribunal determined the premium had been agreed by the parties prior to the hearing taking place. The Respondent suggests given this finding the Applicants' conduct is such that an Order for costs should be made. Directions were issued on 18th May 2021 for the determination of these costs.

4. The parties were reminded that the case of Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC) remains the leading authority on the test which this Tribunal should apply in considering whether or not to make an order for costs pursuant to Rule 13.

Determination

5. In reaching its determination the Tribunal has had regard to all of the documents filed by the parties in accordance with the directions issued.

6. The directions provided that this matter was to be determined on the papers unless either party requested a hearing. No hearing has been requested by either party. We are satisfied that the matter is appropriate to determine on the papers.

7. We have also had regard to our findings and the decision made in the substantive applications.

8. We remind ourselves that before making any Order we must be satisfied that the way that the Applicants conducted the proceedings was unreasonable. This is not the same as saying that we found in favour of the Respondent's arguments. Likewise we remind all that the

usual rule in such proceedings is that each party bear their own costs, the parties should approach proceedings on that basis and should not have an expectation that costs will be recovered.

9. The Respondent's argument is that the Applicants acted unreasonably in pursuing these proceedings after an agreement had been reached. The Applicants say to do so was not unreasonable.

10. Further the Respondent contends as a separate issue that the Applicants included within the bundle substantial amounts of documents which had not been disclosed in accordance with the directions issued in the substantive proceedings. The inclusion of these documents incurred the Respondent's representatives additional work and such conduct was unreasonable.

11. The Applicants' representative filed a reply to the Application dated 18th June 2021 (this included their submissions in respect of the separate statutory costs determination). The submissions refer to the Applicants being litigants in person and of limited means.

12. Whilst plainly Ms Cook was a litigant in person for the proceedings in terms of her presentation of the case, we note that throughout the collective enfranchisement claim the Applicants have had the benefit of legal and surveying advice. We were referred to the same within the main proceedings.

13. The Applicant refers to having taken advice from a barrister who drafted a letter which was sent by Wilson and Co solicitors. It was this letter which referred to the Applicants contemplating County Court proceedings. The Applicants now contend they believed the Tribunal would determine all matters.

14. On balance we do not accept the Applicants' submissions in this regard. It was on their instructions that a letter was sent referring to the County Court having jurisdiction to resolve any dispute as to what land was to be acquired. In her evidence at the substantive hearings Ms Cook explained that the Applicants had not applied to the County Court to avoid the costs of such proceedings. We find that the Applicants knew or ought to have known it was for the County Court to amend the plans attached to the two original notices and the Tribunal could only proceed on the basis of the actual notices served. We found as a matter of fact in the substantive proceedings that the two notices did not include all of the freehold.

15. We found that an agreement as to premium had been reached at the end of August 2020. All steps by the Applicants up until that point cannot be faulted, they had quite properly made application to the Tribunal and any and all costs incurred by the Respondent (including surveyors fees and legal expenses) are quite properly to be paid by the Respondent. It was for the Respondent to determine what

representation they required on the basis that the starting point is they will be responsible for their own costs.

16. We were satisfied that this was a binding agreement for the reasons set out in our original decision. We do not repeat those but rely upon that decision.

17. It is correct to say that the Respondent raised the issue of there being agreement prior to and at the telephone case management hearing on 18th November 2020. From at least this point in time the Applicants knew or ought to have known it was the Respondent's case that the premium had been determined by agreement on 25th August 2020.

18. We are satisfied that Ms Cook had taken legal advice as to her position. Her reply document to this application sets out the steps she took which included a consultation with a barrister and instructing solicitors to correspond with the Respondent.

19. It was the case that the Applicants choose to proceed with the Tribunal application notwithstanding the agreement. We have considered carefully whether in our determination this amounts to unreasonable conduct. Whilst we accept greater leeway must be afforded to a litigant in person as we have found the Applicants have had the benefit of legal advice from solicitors and barristers. The Applicants themselves instructed Wilson and Co to send a letter dated 2nd November 2020 setting out the correct course of action which the Applicants should have followed if they were unhappy with what land was to be transferred. Despite this they choose not to do so.

20. In this case agreement was reached as to the premium payable. It is clear from the correspondence (and the earlier findings we made) that both parties considered that to be a binding agreement. In our determination seeking then to re-open the terms of the agreement does amount to unreasonable conduct. We accept some time may be required for legal advice and reflection given the circumstances of this case, but in our judgment by the end of 2020 the Applicants should have accepted the premium had been agreed.

21. We note that by the date of the hearing the form of transfer was not agreed. We accept that it certainly appears neither party had given much time to this issue. At the substantive hearing, relatively little time was given to this matter.

22. At the substantive hearing the Applicants sought to persuade the Tribunal that we had powers to determine that the land to be enfranchised. The Applicant asserted we could determine the land to be enfranchised was the whole of the freehold and not as set out in the plans served on or behalf of the Applicants with the two initial notices. Again, we found this argument to be misconceived. This was the very issue raised in the letter of Wilson and Co referred to above which suggested an application to the County Court. Ms Cook told the

Tribunal at the substantive hearing that she had not made an application to the County Court due to the costs in so doing.

23. The Applicants suggest much time was spent on determining "development value" being a matter we did not accept the Respondent's experts' evidence. We do not accept that substantial time was spent on this aspect and we are satisfied it was a reasonable matter for the expert to raise irrespective of our findings. To be clear the conduct of the Respondent in this regard cannot be said to be unreasonable.

24. We determine that the conduct of the Applicants in continuing to argue that the premium was not agreed after January 2021 was unreasonable. Whilst we found the agreement itself was reached in August 2020 we accept it was reasonable for the Applicants to continue the proceedings in respect of the premium up to the end of 2020, during which time the issue over the land to be transferred was clarified, the Applicant took advice and had the benefit of having the Respondent's position confirmed at the case management hearing. Thereafter having taken advice in our judgment the Applicants should have accepted the Premium had been determined for the land which they sought to enfranchise under the two notices served. It may have been open to them to apply to the County Court to vary the plans but the Applicants did not do so.

25. We make clear that the Tribunal is conscious that it is in accordance with the overriding objective to uphold agreements parties have reached. The Tribunal encourages negotiation and once agreement is reached parties must accept that such agreements are binding.

26. Having determined that the conduct was unreasonable it is now for us to consider whether or not an order for costs should be made and if so the amount.

27. We are satisfied that an order should be made. Plainly the Respondent had to prepare the case on the basis that the premium payable was in dispute. The Respondent instructed an expert valuer and also looked to instruct specialist counsel to represent them at a hearing which took place over two separate days and heard expert evidence from both sides. To do so was entirely reasonable conduct and such costs were incurred due to the Applicants' unreasonable conduct in suggesting there was no agreement as to the premium.

28. We comment here on the documents produced by the Applicants which the Respondent say are not in accordance with the directions. We accept that such documents should have been served at the date given for the Applicants to serve witness evidence. However, it may be said the directions were unclear in this regard. Such documents were not relied upon by the Tribunal in determining any issue at the substantive hearing. They demonstrated the ill feeling that existed between Ms Cook and the Respondent and its director Mr Flight. We are satisfied that if served at the correct time the Respondent and its advisers would

still have had to consider the same. Any experienced adviser would note that they were unlikely to impact on matters to be determined by the Tribunal.

29. It is then a question of considering the amount of any order. We have looked at the schedule produced and comment that we are of course determining this on a summary basis. We are satisfied that a hearing may still have been required to finalise the terms of any transfer.

30. The total costs claimed are approximately:

Surveyors fees	£6,000
Counsel	£8,400
Solicitors	£15,820
Total	£30,220

31. In our judgment the Applicants should pay the sum of £10,000 as costs pursuant to Rule 13.

32. In determining the amount, we have had regard to the invoices and costs breakdowns supplied by the Respondent. We have taken account of the surveyors' fee and payment to counsel for the second day of hearing together with the solicitors costs generally and determine that this amount fairly represents in our judgment the reasonable costs thrown away as a result of the Applicants' unreasonable conduct.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.