



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

Case Reference : **MAN/30UH/PHC/2017/0007**

Property : **3 Broadfields Park,
Oxcliffe Road,
Morecambe,
LA3 3 EH**

Applicant : **Mr Alan Thorpe**

Representative : **N/A**

Respondent : **Britaniacrest Limited**

Representative : **Mr Richard Mullan, Counsel**

Type of Application : **Rule 13 application for costs**

Tribunal Members : **Deputy Regional Valuer N. Walsh
Deputy Regional Judge L. Bennett**

Date of Decision : **2 May 2019**

Date of Issue : **29 May 2019**

DECISION

DECISION

The Applicant's cost application under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is refused.

REASONS

Background

1. The decision concerns an application for costs made by the Applicant in these proceedings against the Respondent, Britaniacrest Limited, the site owner of Broadfields Park, Oxcliffe Road, Morecambe LA3 3EH. The Applicant, Mr Thorpe, is the occupier of 3 Broadfields Park and also the secretary of Broadfields Park Residents' Association.
2. The proceedings arise out of Mr Thorpe's application for a determination of certain questions under section 4 of the Mobile Homes Act 1983.
3. We will say more about the procedural history of this case presently. However, on 22 November 2019 a hearing was held at the Blackpool Magistrates Court, Civic Centre, Chapel Street, Blackpool FY1 5DQ. The Tribunal determined the following:
 - The Respondent shall be remunerated through the pitch fee for the provision and maintenance of existing meters and is not entitled to levy a separate charge for this service.
 - The Respondent is liable to repay the Applicant the sum of £735.84, to be paid by 28 February 2019, in respect of charges levied up to the date of this decision.
 - The Respondent must maintain the existing utility meters serving each pitch, pursuant to its obligations under the written agreement.

The application for costs

4. The Applicant seeks an order for costs against Britaniacrest arguing that the site owner has acted unreasonably in the conduct of these proceedings. The detailed reasons and the amounts being sought are as follows:

4.1 "Travelling expenses to Blackpool, subsistence and attendance at Hearing for me and chairman of the QRA.

- £100.00"

4.2 “And also for members Mr & Mrs Devine and Lynne Danson.
- £130.00”

4.3 “Preparation for the meeting arranged for 21 August 2018 postponed on 20 Aug 2018 (giving less than 24hrs notice), the second time the Respondents had defected (their counsel having other matters to attend to).
- £120.00”

4.4 “In the Decision dated 23 Feb 2018 item 4 the respondent was ordered to pay the Applicant the sum of £200 to reimburse the hearing fee, (due to unreasonable conduct), this should also be included in the costs.
- £200.00”

4.5 “Finally I would like to also apply for consideration in terms of compensation having regards to unsatisfactory delays caused by and entirely due to the Respondents, time I can ill afford”.

5. The Tribunal wrote to the parties on 28 February 2019 advising that the matter would be determined on paper and upon the basis of written submissions alone, unless either party requested an oral hearing within 14 days. No such request was received. Neither were any written submissions received from the Respondent in respect of this application, despite being afforded the opportunity to do so.

The relevant law on costs

6. The Tribunal’s powers to make orders for costs are governed by rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The general principle (set out in rule 13(1)(b)) is that the Tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal. The application of rule 13 was considered and explained by the Upper Tribunal (Lands Chamber) in the case of Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC). The correct application of the rule requires the Tribunal to adopt the following approach when determining an application for costs:
1. Is there a reasonable explanation for the behaviour complained of?
 2. If not, then, as a matter of discretion, should an order for costs be made?
 3. If an order for costs should be made, what should be the terms of that order?

The procedural history

7. In order to determine the reasonableness or otherwise of the Respondent's conduct, it is first necessary to set out chronology some of the key elements to these proceedings.
8. On 15 November 2017, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. The Respondent requested an oral hearing and arrangements were made for a hearing on 23 February 2018. In response to directions, both parties submitted the required Statements of Case and documentation.
9. Following a hearing on 23 February 2018, the Tribunal issued its decision. The Tribunal ordered that the Respondent reimburse the Applicant's hearing fee of £200.00 because the "Respondent asked for an oral hearing but failed to attend. The Respondent did not contact either the Tribunal or the Applicant to explain why it did not attend. The Tribunal found that amounted to unreasonable conduct."
10. On 6 March 2018, the Respondent advised the Tribunal that it had not received the hearing notice and so was completely unaware of the hearing until sometime after the hearing had occurred. Consequently, on 25 May 2018 the Tribunal allowed the Respondent's application under Rule 51(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to set aside the decision dated 23 February 2018.
11. A re-hearing was then arranged for 21 August 2018. On the 20 August 2018, Counsel for the Respondent, Mr Mullan, advised the Tribunal that due to a diary clash he was unavailable on 21 August 2018, no suitable alternative counsel could be sourced and that there would be no attendance by the Respondent. Counsel submitted detailed skeleton arguments for the Tribunal's consideration should the hearing proceed without the Respondent or Mr Mullan being present. Upon this late notification, the Tribunal decided to postpone the hearing until a date that the Respondent could avail of representation. A de novo hearing was eventually held on 22 November 2018, which both parties attended, with the Respondent being represented by Mr Mullan of Counsel.

Determination

12. The Tribunal considers that there can no grounds to allow the Applicant to recover the travel costs of parties not joined to these proceedings when they, Mr and Mrs Devine and Ms Danson, did not engage in any way in these proceedings. We can see no justification for making such a request.

13. While the Tribunal can understand the Applicant's frustration at having to attend two hearings, there is a clear and reasonable explanation why this happened. It was entirely reasonable that the Respondent should apply to the Tribunal to set aside its decision of 23 February 2018 when the Respondent had not received due notification of the hearing. In setting aside the earlier decision under rule 51(1) the Tribunal had already determined that it was reasonable to do so, clearly otherwise it would not have done so.
14. With one exception, which we will return to imminently, we find that the Respondent has properly engaged with these proceedings, acted reasonably and made appropriate applications to the Tribunal. Also, given that Counsel appeared on behalf of the Respondent at the hearing on 22 November 2018, made detailed oral submissions on the law, citing relevant case authorities and sought to distinguish the facts in this case, as the Respondent saw them, we can find no grounds to order the reimbursement of the Applicant's hearing fee. The Respondent was entitled to fully respond to these proceedings and to request a hearing so as to allow oral submission to be made on his behalf.
15. The one exception, where we do find that the Respondent's conduct was unreasonable, was in only informing the Tribunal the day before the scheduled hearing on 21 August 2018 that neither the Respondent nor Counsel would be attending the hearing. Having received the appropriate hearing notification, after specifically requesting a hearing (when the Applicant's preference was for a paper determination) and the Tribunal having set aside its previous decision so as to enable the Respondent to present its case at a hearing, we consider this to be unreasonable behaviour. Given the nature of this dispute and the arguments presented in Counsel's skeleton arguments, the Tribunal considered that it was left with little choice but to re-list the case for a hearing date when all parties, including Counsel, could attend.
16. In accordance with the decision in Upper Tribunal decision of Willow Court, having found that there was not a reasonable explanation for the Respondent's conduct in this particular instance, we next must consider, as a matter of discretion, whether an order for costs should be made.
17. While the Tribunal does not doubt that the Applicant spent time preparing for the scheduled hearing on 21 August 2018, we do not consider that this was necessarily unproductive or abortive time. We consider that some preparation would obviously be required before any hearing and we expect that this time would have significantly minimised the subsequent preparation time required for the actual hearing, which took place on 22 November 2019. We are therefore not minded to exercise our discretion and make an order for costs.
18. In all other respects we find that the Respondent has properly engaged with these proceedings and acted reasonably at all times. Accordingly, for the reasons set out above, the Applicant's application for cost under rule 13 is refused.