



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

Case Reference : **LON/00BG/LSC/2019/0048**

Property : **Ironworks, 58 Dacre Road, London E3
2NX**

Applicant : **Wallace Estates Limited**

**Representative
Solicitors** : **Mr G Stevenson of Stevensons**

Respondent : **The leaseholders of the Property**

Representative : **Mr Foxcroft of Devonshires Solicitors**

Type of Application : **Costs – Rule 13**

Tribunal Members : **Judge Carr**

Date of Decision : **23rd September 2019**

DECISION

The Tribunal does not make an order for costs against the Applicant pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Background and arguments

1. The Applicant originally issued proceedings against the Respondent for the determination of costs relating to the replacement of cladding on the property and the costs of a waking watch. In a letter to the Tribunal (copied to the Respondents) dated 12th July 2019, the Applicant withdrew that part of its application relating to the reasonableness of any costs for replacement cladding with reference to the renewal of cladding, explaining to the Tribunal that it was responding to information from the Government in connection with funding for cladding remediation works.

2. The Respondents, within the documentation considered by the Tribunal during its determination of the application, made an application under Rule 13 of the Tribunal Procedures (First Tier Tribunal) (Property Chamber) Rules 2013. The basis for the application was that the Applicant had withdrawn significant parts of its application, and that the Respondents had incurred significant fees in having a lawyer consider those parts of the application subsequently withdrawn. That application was repeated in a letter dated 11th July 2019 when the Respondents asked the Tribunal to make an Order pursuant to Rule 13 that the Applicant be required to pay the Respondent's costs occasioned by that part of the application they have now withdrawn on the basis that the Applicant's conduct in bringing and then subsequently withdrawing part of the Application was unreasonable.
3. The application was determined on the papers by Judge Carr, sitting with Mr Geddes and Mr Ring on 24th July 2019. The Tribunal, in its determination of the application, directed that the Applicant respond to the Rule 13 application from the Respondents.
4. The Applicant provided a response on 12th August 2019. The essential elements of the Applicant's response is that it decided to withdraw part of the application in order to save costs. The decision was prompted by a government announcement made three months after the application was made. In the light of the contents of the announcement the Applicant believes that there was no longer any current need for the Tribunal to deal with any assessment of the reasonableness of any costs with reference to the renewing of cladding.
5. The Applicant argued that the threshold for Rule 13 costs set by the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC) was high and that in this case it had not been met.
6. In particular it had a reasonable explanation for its conduct – the terms of the government announcement.

The Law

7. Rule 13 of the Tribunal Rules provides in so far as is relevant to this application (emphasis added):

13. Orders for costs, reimbursement of fees and interest on costs

(1) The Tribunal may make an order in respect of costs only—

(b) if a person **has acted unreasonably** in bringing, defending or conducting proceedings in—

.....

(ii) a residential property case;

8. In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC)), the Upper Tribunal (“UT”) gave guidance on how First-tier Tribunals (“FTTs”) should apply this rule. It is a decision to which any party seeking a penal costs order under Rule 13 must have careful regard in framing any application for costs.

Determination

9. The Tribunal is satisfied that this is not a case for any award of costs under Rule 13. It accepts the explanation of its conduct from the Applicant and agrees that the threshold set by Rule 13 is high.
10. The UT set out a three-stage test:
 - (i) Has the person acted unreasonably applying an objective standard?
 - (ii) If unreasonable conduct is found, should an order for costs be made or not?
 - (iii) If so, what should the terms of the order be?
11. The Tribunal is satisfied that the Applicant did not act unreasonably in the particular circumstances of this case.

Judge Carr
23rd September 2019

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.