



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

Case Reference : **BIR/OOGA/PHP/2019/0001**

Property : **Saltemarshe Castle Park, Stourport Road,
Bromyard, Herefordshire, HR7 4PN**

Applicant : **Herefordshire Council**

Respondent : **Wyldecrest Parks Management Limited**

Application : **Annual Site Licence Fee
Caravan Sites and Control of Development Act**

Tribunal : **Judge D Jackson
Mr RP Cammidge FRICS**

Date of Decision : **15 January 2020**

DECISION – RULE 13 COSTS

1. On 27th September 2019 the Tribunal received, from the Local Authority, an application for an Order as to payment of the annual site licence fee by the licence holder (“a payment order”) under section 5A(3) of the Caravan Sites and Control of Development Act 1960.
2. On 6th November 2019 the Local Authority sent to the Tribunal “Applicant’s Request to withdraw the application”. Claire Corfield, Service Manager for Licensing, Gypsy Traveller and Technical Support states that the application to the Tribunal was made by a colleague who believed that the details provided were correct. However once Claire Corfield read the application she “became aware of problems, in particular with the invoices and the dates on them”.
3. At paragraph 5 of the application to withdraw Claire Corfield goes on to say:

“The matter of the incorrect dated invoices had been the subject of communication between Mr Sunderland [Respondent’s Estate Director] and I, where I had assured him that the matter would be corrected and the responsible officer was instructed accordingly. Clearly this was not done and no corrected invoice was sent for the period 2019- 2020”.

4. As a gesture of goodwill and by way of formal apology the Local Authority also offered to write off the amounts due 2018-2019.
5. On 18th November 2019 the Tribunal consented to withdrawal under Rule 22(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
6. Directions were also issued on 18th November 2019 in relation to submissions from both parties in relation to costs under Rule 13.
7. The Respondent’s submissions are dated 27th November 2019. The Respondent has been put to the “time and trouble” of preparing a Response to the application. The Response is dated 30th October 2019 and runs to 28 paragraphs. The Respondent applies under both Rule 13(1)(a) and Rule 13(1)(b). At paragraph 13 of submissions the Respondent indicates that it “has endeavoured to make the majority of the submissions, responses etc. personally and therefore to act in a way which is proportionate, had regard to the complexity of the issues and anticipated costs by keeping the solicitor involvement and legal expenses to a minimum”.
8. The costs claimed by the Respondent total £700. That sum consists of 10 hours preparation time charged at litigant in person rates (£19 per hour) and £ 500 solicitors fees as detailed in an invoice from LSL solicitors dated 21st November 2019.
9. The Local Authorities Submissions in Response were received by the Tribunal on 11th December 2019. The Local Authority accepts that the invoices were issued incorrectly. As soon as those mistakes became apparent the application was withdrawn. At the time of making the application the Local Authority “believed the matter to be one of a simple non-payment of fees by a reluctant debtor”. The officer who made the application believed that the invoices were correct. The Local Authority denies acting in way which was improper, unreasonable or negligent.
10. The Local Authority will “consider revision of our procedures so that complex matters such as these are referred for legal advice in future”. Claire Corfield “will arrange for additional training to be given to officers involved in this area, and also do a review of all associated documents.
11. The Local Authority “is grateful to Mr Sunderland for keeping his costs to a minimum”. On that basis the quantum of costs is not disputed. The only issue for the Tribunal is whether the provisions of section 29(4) of the Tribunals Courts and Enforcement Act 2007 or Rule 13(1)(b) are satisfied.

12. At paragraphs 27 and 28 of its judgement the Upper Tribunal in Willow Court Management (1985) Ltd v Alexander [2016] O290 UKUT (LC) said:

“27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: “the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably....” We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.”

13. Applying an objective standard of conduct we find that the Local Authority has acted unreasonably in making its application to the Tribunal. Paragraph 5 of the Applicant’s request to withdraw makes it clear that Claire Corfield had discussions with Mr Sunderland and “assured him that the matter would be corrected and the responsible officer instructed accordingly”. We specifically make no finding of negligence against the officer who submitted the application to the Tribunal. She was acting in good faith. The unreasonable conduct is that of the Local Authority which failed to ensure that proper procedures were in place to ensure that the responsible officer was aware of the full circumstances of the case and the requirements and obligations placed on the Local Authority before she applied to the Tribunal. That failure amounts to unreasonable conduct in bringing proceedings for the purposes of Rule 13(1)(b).
14. We exercise our discretion in favour of making an order. The unreasonable conduct is clear and the Respondent has clearly been put to the time and expense of preparing a detailed Response to the application.
15. At the third stage of our deliberations we note that the quantum of costs is not disputed by the Local Authority.
16. As we have made an order in full under Rule 13(1)(b) we do not need to consider whether or not the conditions of section 29(4) of the 2007 Act are also fulfilled.
17. Neither party has requested an oral hearing and we have determined this Rule 13 application on the basis of the written submissions of both parties.

Decision

18. Under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule the Tribunal makes an Order that the Local Authority pay to the Respondent the sum of £700 in respect of costs.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends this written Decision to the party seeking permission.