FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UB/HNA/2019/0017**
Property	**:**	**26A and 31 Priory Road, 17 Radegund Road**
Applicant	**:**	**Mr Dennis Whitfield**
Respondent	**:**	**Cambridge City Council**
Type of application	**:**	**Costs - rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal member(s)	**:**	**Judge Wayte**
Date of decision	**:**	**13 March 2020**

DECISION

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1. **The tribunal determines that the Respondent should pay the Applicant £300 in respect of the application fees to the tribunal within 28 days of the date of this decision under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").**

2. **The tribunal does not make an order for costs under rule 13(1)(b) of the 2013 Rules.**

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Background

1. The underlying application in this case, filed on 2 October 2019, sought to appeal three Final Notices of Penalties under Schedule 13A of the Housing Act 2004. Directions were given on 18 October 2019, with the respondent's bundle due by 18 November 2019. That date was extended on the request of the respondent to 25 November 2019 but on 22 November 2019 the respondent wrote to the tribunal indicating that a decision had been made to withdraw the notices. Consent to the withdrawal was confirmed by the tribunal on 18 December 2019. The notices have since been reissued.

2. Following the receipt of that order the applicant made an application for his costs of the proceedings under Rule 13(1)(b) of the 2013 Rules, on the basis that the respondent had acted unreasonably in defending or conducting the proceedings. Directions were given for written representations and the application to be decided without a hearing, in the absence of a request from either party. No such request was received and the matter was therefore considered on the papers on 13 March 2020. The applicant also applied for the refund of his application fees under Rule 13(2), which was conceded by the respondent.

3. The leading decision on Rule 13(1) costs is *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. In paragraph 43 the Upper Tribunal made it clear that such applications should be determined summarily and the decision need not be lengthy, with the underlying dispute taken as read. There are three steps: I must first decide if the applicant acted unreasonably. If so, whether an award of costs should be made and, finally, what amount.

4. In deciding whether a party's behaviour is unreasonable the Upper Tribunal in *Willow Court* cites with approval the judgment of Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 2005. It does so at paragraph 24 of its decision in these terms:

   ""Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?".

The applicant's case

5. The applicant's solicitors provided a statement in support of his application for costs dated 3 February 2020, addressing the three stages as required by the directions. As to the first stage, the

unreasonable conduct was said to be the service of defective notices in the first place (the time limit for payment was incorrectly stated), their withdrawal without any clear statement about the council's position on the alleged offences and the failure to concede the appeals promptly.

6. In terms of the second stage, whether the tribunal ought to make an order, it was submitted that the effect of the unreasonable conduct would be that the applicant will incur duplicated costs, on the assumption that the notices would be reissued.

7. In terms of the third stage, the amount of costs, a request was made for all of the costs incurred after service of the Final Notices. A costs schedule had already been provided by the applicant with a total claim of £2,874.60.

The respondent's case

8. The council's statement dated 16 February 2020 conceded that an order should be made for them to pay the application fees as the applicant had, in effect, won his case. However, it denied unreasonable conduct as claimed by the applicant or at all. In the circumstances there should be no order as to costs under Rule 13(1).

9. Addressing the first stage, the respondent denied that the error rendered the notices of no effect but even if that were the case, that would not satisfy the test for unreasonable conduct in defending proceedings, as the notices predated the appeal. In any event, there is no rule that the mere fact that a party loses their case means they have acted unreasonably. As to the lack of any reason given to the applicant, the respondent stated that his solicitors had been informed orally of the reason. The respondent also denied any lack of prompt action; they were notified of the appeal on 18 October 2019 and provide notice of their intention to withdraw the notices on 22 November 2019, five weeks later.

10. On the second stage, even if unreasonable conduct was established, the respondent argued that no order for costs should be made. Although the notices had been reissued, there was no duplication. The applicant could simply reuse the grounds already provided.

11. In terms of the amount of any order, the respondent argued that unless the tribunal found that the issuing of the final notices was in itself unreasonable conduct, the unreasonable conduct alleged in the proceedings had little or no impact on the costs, a few hundred pounds at best. The respondent also took issue with the hourly rates charged, which they claimed were above the rates for Cambridge.

The applicant's reply

12. In response, the applicant submitted that the respondent's conduct should be considered in the round. The effect of their approach had been that little or no progress had been made in resolving the

underlying matters in dispute during the proceedings. The applicant reiterated his request for the whole costs and submitted that instructing solicitors in London was reasonable.

Tribunal decision and reasons

13. The Upper Tribunal in *Willow Court* are clear that unreasonable conduct is a high bar and I do not consider that the respondent's conduct in these proceedings comes close. I appreciate it is frustrating for the applicant that he now faces a second appeal but much of the work done in relation to the first set of notices is likely to be useful for those new proceedings. The only obvious duplication is in relation to the application fees, which have been conceded.

14. The respondent's failure to provide correct wording in the notice is far from unique and arguably would not have rendered the notices invalid in itself, see paragraph 74 of *London Borough of Waltham Forest v Younis* [2019] UKUT 0362. In any event, that was not conduct in relation to the proceedings. A reason was given for the withdrawal, albeit in a "without prejudice" conversation. I do not consider the fact that no progress has been made in these proceedings unreasonable conduct either.

15. In the circumstances, there is no need to consider the other two stages and the tribunal does not make an order for costs under Rule 13(1)(b).

16. However, the applicant is clearly entitled to a refund of his application fees under Rule 13(2), as conceded by the respondent and the tribunal therefore orders the respondent to pay the applicant £300 within 28 days.

Judge Ruth Wayte **13 March 2020**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).