



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

Case Reference : **BIR/37UC/PHI/2020/0007**

Property : **12 St Oswald's Park, Dunham on Trent,
Newark, Nottinghamshire, NG22 0UB**

Applicants : **Alec Holland & Tina Holland t/a Holland Parks**

Representative : **IBB Solicitors**

Respondents : **John Richards & Beryl Richards**

Type of Application : **An application for costs under Rule 13 of the
Tribunal Procedure (First-tier Tribunal
(Property Chamber) Rules 2013**

Tribunal Member : **V Ward BSc Hons FRICS**

Date of Decision : **21 April 2020**

DECISION

BACKGROUND

1. The substantive application for the Tribunal to determine a pitch fee was withdrawn by the Applicants by way of a letter dated 3 March 2020 as the Respondents had paid the new pitch fee.
2. Within the same letter, the Applicants requested that the Tribunal grant under an order in respect of costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
3. The Tribunal issued Directions to the parties and proposed to deal with this matter on the basis of the written submissions of the parties unless either party requested an oral hearing. Neither party requested an oral hearing.
4. The costs sought by the Applicants were essentially legal costs incurred with their advisers, IBB Solicitors. These totalled £1,353.00. The costs can be broken down as follows and were based on the hourly rate of the Grade A fee earner Mr J Clement of £310.00 per hour:

a) Letters - Applicants	£465.00
b) Telephone calls	£279.00
c) Letters - Respondents	£93.00
d) Letters - Tribunals	£62.00
e) Work done on documents	£434.00
f) Tribunal Issue Fee	£20.00
	£1,353.00

Submissions of the Applicant on Costs

5. The Applicants' submissions on costs were contained within their letter of 3 March 2020.
6. The Applicants' justification for this application is that they were put to the expense of issuing proceedings due to the Respondents' refusal to pay the proposed pitch fee increase or to put forward any reasonable justification for their refusal to pay the increase. The Applicants provided copies of pre-application correspondence to support this.
7. A letter of 21 December 2019 from the Respondents to the Applicants querying the increase, states that the latter had failed to provide a written reason for the increase. The letter also lists deficiencies in the maintenance of the park and the way in which it is managed. On 10 January 2020, the Applicants responded to the effect that as the increase sought was only in line with Retail Prices Index (RPI), there was no need to provide further justification other than the RPI basis. This letter also addressed the maintenance issues but in summary stated that the Respondents did not have any reasonable basis to withhold the proposed pitch

fee increase and gave notice that the balance of the pitch fee must be paid within 14 days otherwise the Applicants would be forced to make an application to the Tribunal and reserve the right to draw the correspondence to the attention of the Tribunal in any costs application.

8. On 4 February 2020, the Respondents replied to the effect that they had quoted from the written statement under owner's obligation 22 (b) "if requested by the occupier provide (free of charge) documentary evidence in support and explanation of any new pitch fee". This letter also responds on the maintenance issues.

Submissions of the Respondent on Costs

9. The Respondents state that they did not refuse to pay the pitch fee increase, they were questioning it; on the Applicants pitch fee increase letter there was a statement saying: "*As usual please do not hesitate to contact us if you have any queries at all regarding the above or any other matter*". The Respondents add that the reason they withdrew their application to attend the oral hearing (the Tribunal takes this statement to mean the Respondents paid the pitch fee and hence the application was withdrawn) was due to the "unwarranted rudeness and arrogance" shown by Mr Holland and gave an example of this. They also did not receive the Applicants letter of 9 March 2020.
10. The Respondents quoted advice from the National Association of Park Home Residents which included the following statement: "*Further to the question of costs it was stated that the Tribunal can only make an order for costs against a party in exceptional cases and that is where a party has failed to comply with an order or has acted frivolously/vexatiously/abusively/disruptedly/or otherwise unreasonably in connection with the Proceedings*".
11. The Respondent also gave more information on the maintenance issues on the site.

The Law

12. The First-tier Tribunal is not a jurisdiction, unlike the courts, where the unsuccessful party is normally ordered to pay the costs of the successful party. An order for costs is exceptional, and can only come about through the application of Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The relevant parts of that rule to this matter are:

"Orders for costs, reimbursement of fees and interest on costs

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

- (a) *under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*
 - (b) *if a person has acted unreasonably in bringing, defending or conducting proceedings in—*
 - (i) *an agricultural land and drainage case,*
 - (ii) *a residential property case, or*
 - (iii) *a leasehold case; or*
 - (c) *in a land registration case.*
- (2) *The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*
- (3) *The Tribunal may make an order under this rule on an application or on its own initiative.*
- (4) *A person making an application for an order for costs—*
 - (a) *must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and*
 - (b) *may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.*
- (5) *An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—*
 - (a) *a decision notice recording the decision which finally disposes of all issues in the proceedings; or*
 - (b) *notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.*
- (6) *The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.*
- (7) *The amount of costs to be paid under an order under this rule may be determined by—*
 - (a) *summary assessment by the Tribunal;*
 - (b) *agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);*

- (c) *detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.*
 - (8) *The Civil Procedure Rules 1998(1), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(2) and the County Court (Interest on Judgment Debts) Order 1991(3) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.*
 - (9) *The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.”*
- 13. The FTT’s power to award costs is derived from section 29 of the Tribunals, Courts and Enforcement Act 2007, which provides that “the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid”, subject to the tribunal’s procedural rules.

Determination

- 14. In *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC), the Upper Tribunal provided guidance on the correct approach to costs claims under Rule 13.
- 15. Firstly, the Tribunal should adopt a three-stage process:
 - a. Consider whether the person against whom an order is sought has behaved unreasonably:
 - b. If so, should the Tribunal exercise its discretion to award costs;
 - c. If so, how much should be paid.
- 16. Secondly, “unreasonable” conduct is discussed in some detail. The distillation of that discussion in this section is not a substitute for a careful reading of the *Willow Court* decision itself. Nevertheless, it seems clear to the Tribunal that:
 - a. The Upper Tribunal approved the following passage (from *Ridehalgh v Horsefield* [1994] Ch 2015) as encompassing “unreasonable” conduct:

“... conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on the practitioner’s judgement, but it is not unreasonable.”

- b. It is improbable that the following behaviours would constitute unreasonable behaviour (without more): a party who fails adequately to prepare for a hearing; a party who fails to adduce proper evidence for their case; failure to state a case clearly, or the seeking of a wholly unrealistic or unachievable outcome.
 - c. Tribunals should not be over-zealous in detecting unreasonable behaviour.
 - d. Lay people who are unfamiliar with the substantive law or tribunal procedure, or who fail to appreciate the strengths and weaknesses of theirs or their opponent’s cases, or who lack skills in presentation, or who perform poorly in the tribunal room should not therefore be regarded as acting unreasonably.
 - e. The Tribunal must exercise its own value judgement on behaviours under consideration in the application.
17. In this matter, the Respondents sought answers from questions in relation to the maintenance of the site which were at least partially invited by the phraseology of the Applicants’ pitch fee increase letter before agreeing to the pitch fee increase.
18. However, following *Willow Court* and *Ridehalgh* does this amount to be unreasonable behaviour? Was there a reasonable explanation for the Respondent’s actions in not immediately agreeing to the pitch fee increase? The Tribunal considers that there was as the Respondents’ had concerns over the maintenance of the development and agreed to the increase when their queries were at least partially answered.
19. For the Tribunal to make an award for costs, a high threshold of what is considered to be unreasonable behaviour has to be achieved. In the opinion of the Tribunal, that threshold has not been reached in this matter and hence declines to make an Order for costs.

APPEAL

20. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V Ward