FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AT/HNA/2022/0049**
Property	**:**	**19 Eton Avenue, Hounslow, Middlesex TW5 0HB**
Applicant	**:**	**Manjeet Singh Gill**
Representative	**:**	**Hugh Rowan of Counsel**
Respondent	**:**	**London Borough of Hounslow**
Representative	**:**	**Ms Tara O'Leary of Counsel**
Type of Application	**:**	**Rule 13 cost application following an appeal against a Financial Penalty imposed pursuant to section 249A of the Housing Act 2004**
Tribunal Member	**:**	**Judge P Korn**
Date of decision	**:**	**30 October 2023**

SUPPLEMENTAL DECISION ON COSTS

Paper determination

This has been a determination on the papers alone. An oral hearing was not held because neither party requested an oral hearing and the tribunal considers that it is appropriate and proportionate to determine the issues on the papers alone.

Decision of the tribunal

The tribunal refuses the Applicant's cost application under paragraph 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**").

The background

1. This application is supplemental to an appeal (the "**Main Application**") by the Applicant against the imposition of a Financial Penalty ("**the Financial Penalty**") under section 249A of the Housing Act 2004 ("**the 2004 Act**").

2. The Financial Penalty was in the sum of £13,500 and it was imposed by the Respondent local authority for allegedly controlling or managing and failing to license and/or manage a House in Multiple Occupation ("**HMO**").

3. The Main Application was dated 19 July 2022. Directions were subsequently issued, and the hearing was listed for 21 and 22 June 2023. The Respondent withdrew the Financial Penalty itself in or around early June 2023 and the Applicant then withdrew his appeal with the consent of the tribunal.

4. The Applicant now seeks to recover his costs in bringing the Main Application pursuant to paragraph 13(1)(b) of the Tribunal Rules.

Applicant's written submissions

5. Manjeet Singh Gill, Surinder Kaur and Gurinderjeet (Gurinder) Singh Gill are the joint registered freehold proprietors of the Property, and DBK is their managing agent. Around the middle of October 2021, Mr Gill (the Applicant) was put on notice that the Respondent considered there to be a possible breach of HMO licencing requirements. The Respondent requested information in relation to the ownership and occupation of the Property and the Applicant replied on 25 October 2021 confirming that he was not authorised to manage the land but did indirectly receive rent. He also stated that DBK had spoken with the tenants who confirmed that only they were living at the Property.

6. On 26 October 2021 the Respondent replied raising a concern that under an assured shorthold tenancy agreement ("**AST**") dated 2019 there were three tenants, all with different surnames, while under an AST dated 2020 there were two tenants with different surnames. The Applicant responded on the same day to confirm that Ms Bogatu and Mr Horvat were a cohabiting couple and had one daughter, and that the third person on the 2019 AST had moved out. On 16 November 2021, the Respondent carried out an unannounced visit at the Property. This

led to the preparation of a witness statement on behalf of Mirela Orna Bogatu in which she confirmed the names of the various occupants of the Property. On 7 December 2021, the Respondent sent to each of the Applicants a notice of intent ("**Notice of Intent**") to impose a financial penalty of £13,500 on each of them.

7. The Applicant and his co-owners made formal representations in response to the Notice of Intent on 13 January 2023, but the Respondent confirmed that a final penalty would be issued against the Applicant (although not against the other co-owners) by a letter dated 22 June 2022. The Applicant then lodged the Main Application with the tribunal on 19 July 2022 by way of appeal and the Respondent defended the Main Application until, by way of a 'Without Prejudice Save as to Costs' email dated 2 June 2023, the Respondent's solicitors informed the Applicant's solicitors that: "*We are instructed that our client will no longer pursue the Civil Penalty Notice against your client*."

8. Counsel for the Applicant has summarised the relevant test as to what constitutes an HMO and notes that it is an offence to control or manage an HMO which is required to be licensed but is not so licensed. He also notes that a person has a defence under section 72(5) of the 2004 Act if that person had a reasonable excuse for controlling or managing an unlicensed HMO. He then refers to the Upper Tribunal decisions in *Marigold v Wells [2023] UKUT 33 (LC)* and *Camfield v Uyiekpen [2022] UKUT 234 (LC)* as to what constitutes a 'reasonable excuse'. He also then refers to the three-stage test for unreasonable conduct set out in the leading case on Rule 13(1)(b), namely *Willow Court Management Ltd v Mrs Ratna Alexander [2016] UKUT 290 (LC)*.

9. The Applicant accepts that because the Main Application was withdrawn the tribunal was unable to make a determination in respect of it. However, Counsel for the Applicant submits that the Respondent had insufficient evidence to issue the original Notice of Intent to impose the Financial Penalty or to issue the final notice ("**the Final Notice**") or to defend the Main Application and therefore that it acted unreasonably in doing so. He also submits that the Respondent acted unreasonably in waiting until most costs had been incurred, i.e. less than three weeks before the hearing, to withdraw the Financial Penalty, as it knew or ought to have known much earlier that the Financial Penalty would not be upheld.

10. The Applicant asserts that there was no evidence of an HMO and that even if there had been one the Applicant clearly had a reasonable excuse.

11. On 9 March 2022, the Respondent received confirmation from the tenants that all bar one of the occupants of the Property were related and therefore formed one "household" for the purposes of the 2004

Act. The 'outlying' tenant was Claudiu Moraru who allegedly moved into occupation on 1 May 2021. By an email dated 9 November 2022, the Respondent confirmed that they were satisfied that all remaining tenants formed one household and that once Claudiu Moraru had left there were no licensing requirements for the Property. This reflects the Applicant's position as originally set out in their representations in response to the Notice of Intent. Mr Moraru was only a temporary resident, visiting as a friend of the lead tenants. There is no direct evidence from Mr Moraru as to the nature of his occupation. Further, Mr Moraru was not present during the Respondent's unannounced inspection and the Respondent has neither sought nor secured any direct evidence from Mr Moraru.

12. The Applicant's evidence by contrast was that Mr Moraru was only present for a couple of weeks as per a signed witness statement from one of the lead tenants. There was no other evidence to suggest that Mr Moraru was present for a longer period of time and/or occupied as his only or principal home. On the Respondent's own evidence, Mr Moraru was not named on Ms Bogatu's witness statement during the Respondent's unannounced inspection. The Respondent's own evidence includes emails from each of Mr Horvat and Ms Bogatu stating: *"for clarity I am occupying the property as a single-family dwelling with my visiting friends"*.

13. The Respondent therefore had no evidence that Mr Moraru occupied the Property as his only or principal home. Hence, there was no evidence that the Property was an HMO. Furthermore, Mr Moraru's name was provided to the Respondent for the first time on 30 December 2021. Therefore, when the Respondent issued the Notice of Intent on 7 December 2021 it was not aware of, and had no evidence to support, the allegation that Mr Moraru was occupying the Property as his main/only residence, yet it issued the Notice of Intent based on there being "7 persons, forming 3 households". The Respondent ought to have ascertained who was and was not related, as well as who was occupying as their main/only residence, before issuing the Notice of Intent. The Applicant had no choice but to incur significant legal costs once the Notice of Intent was issued and continued incurring legal costs throughout.

14. Alternatively, if there was an HMO there was no evidence that the Applicant had any knowledge that the tenants had let additional persons into occupation. At all times, the Respondent knew that the Applicant used DBK as their point of contact at the Property. Also, the Respondent has never adduced any direct evidence indicating that either the Applicant or DBK had direct knowledge of the additional persons occupying, and the terms of the AST governing the tenants' occupation of the Property prohibited subletting. In the circumstances, the Applicant submits that he did have a reasonable excuse, and that the tribunal would have found that he did.

15. The Applicant also states that his appeal has been closely tied up with the Respondent's other actions against the Property, in particular an improvement notice served on the Property to address various defects as well as the Applicant's parallel attempts to evict the tenants. On 14 September 2022, the Applicant expressed his concern that he was being used as a 'pawn' in relation to the disrepair and other issues and he suggests that it is notable that it was only after these ancillary matters had been addressed by the Applicant that the Respondent withdrew the Financial Penalty.

Respondent's written submissions

16. Counsel for the Respondent also makes reference to the decision of the Upper Tribunal in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander (2016) UKUT 290 (LC)*.]

17. The Respondent suggests that the tribunal should adopt a cautious approach when awarding costs against local housing authorities in the context of an appeal against a financial penalty under the 2004 Act. The statutory purpose of Part 2 of the 2004 Act was described in *Urban Lettings (London) Ltd v Haringey LBC [2015] UKUT 104 (LC)* as *"to require HMOs to be licensed to ensure that the premises were suitable for multiple occupation, that the licensee was a fit and proper person and that the management arrangements were satisfactory and to prove both criminal and civil sanctions if the provisions were not complied with"*. That purpose is "for the public good as well as for the protection of the individual occupiers" of HMOs: see *Global 100 Ltd v Jimenez [2022] UKUT 50 (LC)*. It is therefore axiomatic that local authorities should not be deterred by costs considerations from taking decisive enforcement action in accordance with their adopted policies, in circumstances where unregulated and unlicensed HMOs pose significant safety risks to occupants as well as detrimental effects for the wider community.

18. In addition, local housing authorities are granted express power by the 2004 Act to withdraw notices of intent or final notices at any time, and the tribunal should be reluctant to make findings that the use of this power was "unreasonable" for the purposes of costs in circumstances where it was otherwise an entirely reasonable action.

19. The obiter guidance on the defence of reasonable excuse given in *Marigold v Wells [2023] UKUT 33 (LC)* confirms that it is a fundamental requirement for the tribunal to base any decision regarding the defence on findings of fact. The judgment makes plain that it would be inappropriate for the tribunal to express any view on the application of the defence in circumstances where it has heard no evidence and reached no final conclusions. The Respondent submits that this rationale applies with equal force to the context of costs applications in circumstances where a hearing has not taken place, no

admissions have been made and the tribunal has reached no reasoned conclusions.

20. The burden of proof rests squarely on the Applicant to make out the reasonable excuse defence on the balance of probabilities: see *Sutton v Norwich CC [2020] UKUT 90 (LC)* and *I R Management Ltd v Salford CC [2020] UKUT 81 (LC)*. It is not for a local housing authority to satisfy itself – whether before serving notice or on appeal – that the Applicant did not benefit from the defence. Counsel for the Respondent also quotes from the Upper Tribunal decision in *Aytan v Moore [2022] UKUT 27 (LC)* where it concluded: *"We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse"*.

21. On 25 October 2021 DBK sent the Respondent an email with a copy of the then current tenancy agreement dated 3 April 2020 naming Mr Iustin-Ionut Horvat and Mirela-Oana Bogatu as tenants. The email stated that *"…DBK spoke with the tenants, and the tenants have confirmed that no one else is living at the property"*. On 16 November 2021 Mr O'Brien on behalf of the Respondent carried out an unannounced inspection of the Property and his findings showed that the statement made about occupation in the email dated 25 October 2021 was patently untrue. During that visit Mr O'Brien produced bodycam footage containing photographs of each room, a floorplan and a witness statement from one of the named tenants Mirela Oana Bogatu ("**Mirela**"). On his return to the office, he produced his own contemporaneous notes of the visit and a HHSRS scoring chart. Mirela's witness statement contained this: *"I occupy this property with 6 other people"*. Those people were named as Mr Iustin-Ionut Horvat, Bogatu Isabella (their daughter), Katalin Horvat, Mariusz Sandu, Sanon Lucien and "1 other". The answer "yes" was written underneath the statement *"I share kitchen/bathroom/WC/lounge with other people in the property who are not related to me or part of my family"*.

22. Mr O'Brien's notes record the ground floor front bedroom as being occupied by 2 persons paying £300 per month rent. The first-floor right bedroom was occupied by 3 persons paying £500 per month rent. The first-floor left box bedroom was occupied by 1 person "Katalin – brother of main tenant – paying £250 per month" and the first-floor rear right bedroom was "occupied by friend – Mariusz for 2 years – paying £300 per month". These notes were supported by the floorplan showing the location of each room. Mr O'Brien's notes of the bodycam footage state that Mirela specifically told him Mariusz Sandu and Sandu Lucien were both friends of the family. It is therefore simply inaccurate for the Applicant to suggest that when the Respondent issued its Notice of Intent it did not have sufficient evidence to support the allegation that the premises was occupied by 7 individuals who formed at least 2 households. Rather, it had its own visual evidence as well as witness evidence from Mirela that 7 persons were in occupation, confirming the share of the rents they paid, and stating that at least one

occupier ("Mariusz" Sandu) was unrelated to the family, and possibly also a second occupier (Sandu Lucien).

23. On 21 December 2021 Mirela provided copies of bank account statements confirming contributions towards the rent by various persons including "Sandu Marius-Sergi" and "Lucian Sandu". On 30 December 2021 Mirela sent the Respondent copies of passports for 4 occupants including Iustin-Ionut Horvat, Gabriel Catalin Horvat, Marius-Sergi Sandu and Claudiu Moraru. Mr O'Brien noted that as Mirela had been unable to name one occupant in her witness statement that occupant was likely to have been Claudiu Moraru because it was now asserted that he was in occupation. This analysis again supported the contention that the Property was occupied by 7 individuals in 3 households (the unrelated members being Marius Sandu, Lucien Sandu and Claudiu Moraru).

24. On 13 January 2022 the Applicant's solicitors sent written representations to the Respondent which included a letter purportedly signed by Mirela and dated 15 November 2021 (the day before the inspection of the Property). It read: *"We Mirela Oana Bogatu and Iustin Ionut Horvat write to confirm that we rented our rooms to 2 our family members and 1 friend without the knowledge / consent of the landlord and DBK lettings Ltd"*. The Applicant also supplied a witness statement dated 11 January 2022 purporting to be signed by Iustin Ionut Horvat which for the first time described Marius Sandu and Lucian Sandu as his "cousin". It confirmed that Claudiu Moraru was a "friend", but for the first time stated that neither the Sandus nor Mr Moraru occupied the Property as their only or main home.

25. However on 21 February 2022 Mirela and Iustin informed the Respondent – via a friend, Hina Makwana, who was assisting them with correspondence – as follows: *"I am informed by Mr Horvat Iustin that his partner Ms Mirela-Oana Bogatu who does not speak or written English but the estate agent had drafted the letter that you have on a computer screen for her to copy from the screen what the agent had written and put on a paper so it appears that she had written the letter. We would like to confirm that Ms Bogatu did not understand what was being asked of her and she simply followed the instructions while Mr Ionut was out of the country at the time. She felt threated that she would lose her home and she did what the agents tell her …"*. This email gave rise to significant concerns on the part of the Respondent that the occupants of the Property, and Mirela in particular, were being pressured or coerced or encouraged to change the evidence they had originally provided to the Respondent.

26. Mr O'Brien asked Mirela and Iustin to reconfirm the current occupation of the Property. They did so in an occupancy table sent by Hina Makwana by email on 3 March 2022. This maintained that Claudiu Moraru was a friend who had lived in the Property since 1 May

2021 and occupied it as his only or main residence. This email also repeated the assertions that Mirela had been asked to copy an email drafted for her by DBK, which appeared on screen but she was asked to copy into her own handwriting, and that she did so *"under the influence of the agent and a threat of having to leave the home"*. The Respondent considered that the tenants' concerns of intimidation may have been well-founded, given that DBK asserted shortly afterwards that it had served section 21 notices on the tenants in December 2021.

27. As of 25 May 2022 the tenants confirmed that the occupation of the Property remained unchanged, i.e. the same occupants remained at the Property including Mr Moraru. However, they alleged that they had recently been *"harassed by the landlord who has tried to gain access to the property without reasonable notice, and they have demanded a key to enter the property"*. On 14 June 2022 Mr O'Brien interviewed Mirela and Iustin with a Romanian interpreter present, and this interview was produced as evidence to the tribunal in the form of bodycam footage. Mr O'Brien maintained that the tenants' evidence supported the conclusion that the Property was in use as an unlicensed HMO on 16 November 2021. The Final Notice was issued to the Applicant on 22 June 2022 and his appeal was lodged on 19 July 2022. The Applicant supplied a witness statement dated 12 October 2022 and his bundle included a statement dated 7 December 2022. That statement asserted that Iustin-Ionut Horvat had told the Applicant that Mr Moraru had only stayed at the Property as a guest for a "few weeks" and had left the Property before Christmas 2021. However, those assertions are not contained in Mr Horvat's own statement dated 11 January 2022; they are merely the Applicant's own evidence of his conversation with Mr Horvat. Moreover, they are directly contradicted by the fact that Mirela was able to send the Respondent a copy of Mr Moraru's passport on 31 December 2021 and by the evidence supplied by the tenants to the Respondent in March 2023 that Mr Moraru had been living (and still continued to live) at the Property as his only or main residence since May 2021.

28. In the above circumstances the Respondent asserts that it was entitled to hold to the view that there was substantial and sufficient evidence to suggest that the Property was in use as an HMO so as to justify (a) the service of notices of intent and final notices in December 2021 and June 2022 and (b) the Respondent's decision to resist the appeal up to and including the time at which the Applicant served his witness evidence in December 2022.

29. The Respondent also considers that it was entitled to protect its position by filing its reply in March 2023 while it continued to review the merits of the proceedings up to the date of appeal. In circumstances where it was dependent to an extent on the willingness of third parties to attend the tribunal and provide oral evidence, that was not an unreasonable approach to take.

30. The Respondent denies that there was anything specifically unreasonable about the timing of the withdrawal. It denies the unsubstantiated allegation that the Applicant was being used as a 'pawn' in some dispute with DBK. Rather, the Respondent needed to see the evidence contained in the Applicant's appeal bundle in order to further evaluate the merits of the appeal, and that bundle was not served until 7 December 2022. The Respondent further denies that a failure to withdraw the appeal between December 2022 and May 2023 was unreasonable. The vast majority of the Applicant's legal costs were incurred in the preparation of his witness evidence and service of his appeal bundle in December 2022. Thereafter there was no basis to incur anything other than minimal additional costs unless or until such time as the costs of preparation and attendance for an appeal hearing had to be incurred. Three weeks prior to the appeal hearing was more than sufficient time to avoid those costs being incurred. Settlement three weeks before an appeal is very different to settlement following preparation of skeleton arguments or at the door of the tribunal when brief fees have been incurred.

Follow-up by Applicant

31. The Applicant argues that the Respondent had every opportunity to withdraw once they received the written representations in January 2022 but chose not to do so. He submits that it is unreasonable for the Respondent to have continued with this matter after that point and in doing so forcing the Applicant to incur further costs. The Applicant also states that he fully co-operated with the Respondent before it issued the Notice of Intent in December 2021.

32. On a point of detail, the Applicant states that the Respondent only accepted that one person in the household was unrelated, and Ms Bogatu did not name them on her witness statement to the Respondent. This person is Mr Claudiu Moraru. By the Respondent's admission, all other occupants were later found to be related. Also, the bank statements provided by the Respondent show no payments to Ms Bogatu from Mr Moraru during the period of alleged occupation.

33. The Applicant states that it is incorrect to suggest that only minimal legal costs would have been incurred between the witness statement in December 2022 and the case being withdrawn in June 2023. After December 2022, the managing agent's own appeal against a financial penalty was joined with the Applicant's appeal at the Respondent's request, and the hearing was changed from a half-day hearing to a two-day hearing also at the Respondent's request, and a further bundle of documents was required to be reviewed. Each Applicant was required to submit further witness evidence and the Respondent was required to respond. Finally, given the proximity to the hearing, further advice and preparation were required.

The tribunal's analysis

34. The relevant parts of Rule 13(1)(b) of the Tribunal Rules ("**Rule 13(1)(b)**") read as follows: *"The Tribunal may make an order in respect of costs … if a person has acted unreasonably in bringing, defending or conducting proceedings in … a residential property case …"*.

35. As noted by Counsel for both parties, the leading case on this issue is the decision of the Upper Tribunal in *Willow Court Management Ltd v Mrs Ratna Alexander [2016] UKUT 290 (LC)*. In *Willow Court*, the Upper Tribunal prescribed a sequential three-stage approach which in essence is as follows: (a) applying an objective standard, has the person acted unreasonably? (b) if so, should an order for costs be made? and (c) if so, what should the terms of the order be?

36. The first part of the test, namely whether the person acted unreasonably, is a gateway to the second and third parts. As to what is meant by acting "unreasonably", the Upper Tribunal in *Willow Court* followed the approach set out in *Ridehalgh v Horsfield [1994] EWCA Civ 40, [1994] Ch 205*, albeit adding some commentary of its own, and stated (in paragraph 24) that *"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" [in Ridehalgh]: is there a reasonable explanation for the conduct complained of?"*.

37. The Upper Tribunal in *Willow Court* (in paragraph 23) also expressly rejected the submission that *"unreasonableness should not be interpreted as encompassing only behaviour which is also capable of being described as vexatious, abusive or frivolous"*. Therefore, in order for conduct or behaviour to qualify as "unreasonable" under the *Willow Court* test it needs to be vexatious and/or abusive and/or frivolous and/or designed to harass the other side and/or needs to be such that there is no reasonable explanation for it.

38. In the present case, the basis for the Applicant's cost application seems in part to be the Respondent's decision to issue the Notice of Intent and the Final Notice and in part to be its failure to withdraw the Final Notice earlier than it did. To be fair, it may be that the decision to issue the notices is merely being presented as the backdrop to the subsequent decision not to withdraw the Final Notice earlier, but the decision to issue the notices in the first place cannot by itself give rise to a cost award under Rule 13(1)(b). That is because Rule 13(1)(b) relates to unreasonableness in the context of *"bringing, defending or conducting proceedings"* in a relevant case before the tribunal, and the

notices were (obviously) issued prior to the date on which proceedings before the tribunal were brought. The decision not to withdraw the Final Notice earlier could, though, in principle lead to a Rule 13(1)(b) cost award if that decision were to meet the *Willow Court* test.

39. The parties have made lengthy written submissions and I have summarised those submissions in some detail as there was no determination in respect of the Main Application and therefore no decision to which to cross-refer in relation to the factual issues.

40. As the Respondent states and as the Applicant concedes, the tribunal was not called upon to make any factual findings as the Main Application was withdrawn prior to the hearing. The tribunal was also given no opportunity to test the evidence by way of cross-examination or otherwise. This makes it harder for the Applicant to demonstrate unreasonableness as the tribunal now has before it nothing more than untested assertions and counter-assertions.

41. I agree with the Respondent that a tribunal should be cautious in such circumstances, and more cautious still in circumstances where a cost award might deter a local housing authority from performing its statutory duties in relation to housing safety.

42. Having considered the parties' respective submissions, I consider that the Respondent has demonstrated to a sufficient level that its calculation as to when (if at all) to withdraw the Final Notice and therefore to enable the Applicant to withdraw his appeal was not a straightforward one. It was faced with competing information over a long period of time and was entitled to treat some of that information with scepticism. The Applicant has made much of his timely provision of information and has also made assertions as to the reliability of his evidence, but the Respondent was entitled to take a different view as to the reliability of that evidence if it had some proper basis for doing so. And in my view it did have a proper basis for doing so. Not only was the Respondent entitled to place some reliance on what it saw on inspection and not only does it appear that the Respondent was getting contradictory information from different people, but the Respondent also had some basis for being concerned that tenants/occupiers were possibly being pressurised into misrepresenting their status. It is not uncommon for there to be reason to suspect that occupiers have been pressurised into supplying to the local housing authority information which is helpful to their landlords but inaccurate. It would be naïve to suggest otherwise, and in carrying out their statutory functions it is proper that local housing authorities are alive to that possibility.

43. Specifically in relation to the 'reasonable excuse' defence, it is clear from the case law including the Upper Tribunal decision in *Aytan v Moore* that the bar is set quite high for such a defence to be established, and it is not enough for a property owner simply to assert that they

were relying on their agent to deal with matters. Again, in the absence of properly tested evidence on this issue I am unable to say with any confidence that the Applicant has discharged the evidential burden in this case to demonstrate that he had a 'reasonable excuse', and still less is it possible properly to conclude that the defence was so clearly provable that the Respondent's conduct in not conceding this point earlier was unreasonable for the purposes of Rule 13(1)(b).

44. As to the Respondent's conduct overall, it was certainly not vexatious, abusive or designed to harass the other side, and nor was it frivolous. As to whether there is a reasonable explanation for the Respondent's conduct, one possible argument is that the Respondent should have withdrawn the Final Notice nearer to December 2022 and that it was unreasonable for it not to have done so. But in my view such a conclusion would be too harsh. It remains the case that the parties' competing narratives have not been tested, there are sound policy reasons for not imposing cost penalties on local housing authorities simply for spending some time considering what are often complex factual matrices, and I am simply not in a position to conclude on the basis of the information before me that there was no reasonable explanation for the Respondent's decision not to withdraw the Final Notice earlier.

45. I therefore do not accept that the Applicant has demonstrated that the Respondent has acted unreasonably for the purposes of Rule 13(1)(b). As the application has failed to pass the first stage of the test set out in *Willow Court*, it follows that it is unnecessary to go on to consider stages two and three. Accordingly, the Applicant's cost application under Rule 13(1)(b) is refused.

Name: Judge P. Korn **Date:** 30 October 2023

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.