



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

Case Reference : **BIR/00CQ/HML/2022/0001**

Property : **26 Cable Yard, Electric Wharf, Coventry,
West Midlands, CV1 4HA**

Applicant : **Roger Braithwaite**

Respondent : **Coventry City Council
(refs WK/221007458 & LN/222000797)**

Type of Application : **Application for Costs Rule 13 Tribunal
Procedure(First-tier Tribunal)(Property
Chamber) Rules 2013**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr R Chumley-Roberts
MCIEH. JP**

Date of Application : **2022**

Date of Decision : **15 February 2024**

DECISION

The Respondent was unreasonable in the conduct of the defence of these proceedings. The Tribunal makes an order for costs in the sum of £475.65 pursuant to s 29 Tribunals Courts & Enforcement Act 2007, Rule 13(1)(b) and (2) Tribunal Rules

Introduction

- 1) After a hearing in person on 19 December 2022 the Tribunal upheld the Applicant's appeal against the imposition of conditions to a licence for a house in multiple occupation. Its decision was:

To revoke condition 2 Schedule 2B Further Discretionary Conditions attached to the subject Licence, and

To provide the HMO licence granted to the Applicant by the Respondent on 10 May to run for a period of five years from 22 April 2022 to 21 April 2027

- 2) As a result of the decision the Applicant applied for an order for costs against the Respondent council under Rule 13 Tribunal Rules. The Tribunal has received submissions from the parties in support of their respective positions. There has been no request for an oral hearing. This Tribunal has determined relevant facts in making this decision from evidence given at the substantive hearing and the parties written submissions in connection with this costs application.

The Parties submissions

Applicant

- 3) The Applicant asserts the Respondent acted unreasonably in the bringing, defending or conducting the proceedings quoting the operative part of R13. His particulars of unreasonableness related substantially to the way in which the Respondent conducted his application for an HMO licence including an inadequate appraisal of the fire safety provisions in place at the property, disregarding his own fire safety assessment, failure to compare his property with

other neighbouring properties of identical design and layout, making misleading statements regarding conditions imposed on neighbouring properties, late withdrawal of a requirement for a fire door, persisting with a hearing without a good reason.

- 4) The Applicant is an expert in the field of environmental health and building safety. His opinion was that the property was compliant with all relevant building and fire safety regulations. The Respondent's conduct in imposing unreasonable conditions on his HMO licence as well as delay in processing the application caused him shock and embarrassment. He summarises his case as an appeal against a condition that could never have been complied with, namely the installation of a fire door which would contravene building regulations. The result was that until resolution of the dispute the building could not be used as a good quality letting for students as he intended and as it had been used since his acquisition of it in 2013.

- 5) The Applicant's claim for costs is set out in a schedule appended to this decision.

Respondent

- 6) By its submission the Respondent denies it has behaved unreasonably in the conduct of its defence of this matter. It relied on the requirement that parties comply with council procedures when applying for a licence. In the place of various documents for example the Fire Detection Certificate, the Applicant wrote "There isn't one, see fire risk assessment" which was his own document. The Council needs a formal fire detection systems certificate when an application is made for a HMO licence. In this case, the application was rejected and early legal proceedings were initiated for operating an unlicensed HMO. It was explained to the Applicant that his fire risk assessment would need to meet and, be in compliance with, at a minimum with the Council's Amenities Guide (2020) and with the LACORS Guidance (2008) and this could only be assessed by undertaking a full inspection.

- 7) Respondent continued to criticise the adequacy of the Applicant's fire risk assessment. It wanted a Tribunal decision on adequacy of escape.
- 8) As far as the Respondent was concerned, it was irrational and unnecessary to not let the property and put it on the market for sale. There was a dispute of fact over the Applicant's fire risk assessment and the attention paid to it by the Respondent which asserts it made efforts to settle the matter.
- 9) The Respondent firmly refutes the suggestion of unreasonable conduct. It further claims the application was unnecessary because of Applicant's decision to sell the property.

The Legal Framework

- 10) The power to award costs was vested in the Tribunal by s29 Tribunals Courts and Enforcement Act 2007

The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and

(b) all proceedings in the Upper Tribunal,

shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

- 11) The Applicant has properly confined his claim for costs to an allegation of unreasonable conduct on the part of the Respondent contrary to R13(1)(b) of the Tribunal rules which provides

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.

12) R13 goes on to provide at paragraph 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.

13) R13(7) provides

(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.

14) Rule 46(5) The Civil Procedure Rules provides

Litigants in person

(1) This rule applies where the court orders (whether by summary assessment or detailed assessment) that the costs of a litigant in person are to be paid by any other person.

(2) The costs allowed under this rule will not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.

(3) *The litigant in person shall be allowed—*

(a) *costs for the same categories of—*

(i) *work; and*

(ii) *disbursements,*

which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;

(b) *the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and*

(c) *the costs of obtaining expert assistance in assessing the costs claim.*

(4) *The amount of costs to be allowed to the litigant in person for any item of work claimed will be—*

(a) *where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or*

(b) *where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46.*

(5) *A litigant who is allowed costs for attending at court to conduct the case is not entitled to a witness allowance in respect of such attendance in addition to those costs.*

15) In *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 290 (LC), 2016 WL 03506202 Martin Rodger KC said:

*An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. “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?*

16) Recently in *Lea v GP Ilfracombe*[2023] UKUT 108 (LC), 2023 WL 03766071 HHJ Cooke after referring to this paragraph said

"The Tribunal in [Willow Court](#) envisaged a three-stage decision-making process: first, the FTT should decide whether the Respondent to the application behaved "unreasonably" in the sense set out above; if it was then, second, the FTT should decide whether it should therefore make a costs order; third, and if so, it should consider what order it should make. At paragraph 28 it was said:

"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."

Decision

17) The Tribunal is satisfied that the expectation of the Respondent that Applicants for licences will follow their procedures is not of itself unreasonable. Although the Applicant, as an environmental health officer of considerable expertise, strongly disagreed with the Respondent's position that does not make their conduct unreasonable under R13(1)(b).

18) However, in this case the Respondent made a late decision to withdraw the requirement for a fire door then proceed with a new contention that the configuration of the kitchen involving open access to the stairway leading across the central staircase to the living area and the use of half height walls to both kitchen and living area created a hazard, namely that in the event of fire from the kitchen there was insufficient means to prevent escape of smoke.

- 19) The Tribunal acknowledges that it is not enough that the conduct leads in the event to an unsuccessful outcome, but the continued pursuit of a claim when it appeared the Respondent did not expect a successful outcome having withdrawn its principal proposition, was unreasonable. Pursuing the claim in this way appeared to the Tribunal an attempt to salvage something from the reference to the Tribunal even though its principal issue was withdrawn. For this reason, the Tribunal will make an award of costs under R13(1)(b) for work done in connection with the hearing on 19 December 2023 .
- 20) However, any award of costs is intended as payment for work done in connection with the proceedings. Apart from the Tribunal fees, postage, attendance subsistence some preparation time all other items in the Applicant's claim are for payments which are not related to the preparation of the case but are in the nature of damages for a breach of duty which is outside the jurisdiction of the Tribunal in any event as well as beyond a claim for litigation costs both of the unsuccessful hearing and the work prior to 16 December 2023 when the issue of the need for a fire door was withdrawn.
- 21) The only items which are proper claims under R13(1)(b) are preparation for the hearing, postage, travel and subsistence. The preparation has not been itemised adequately or at all. The Tribunal will allow 6 hours at £25 being £150 for having to conduct a case that ought not to have run. Other work done by the Applicant related to work in connection with the fire door. In addition to the fees the Tribunal awards reimbursement of postage £7.65 and travel and subsistence £18.00.
- 22) Rule 13(2) empowers the Tribunal to require *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*. The Respondent will pay the Applicant the sum of £300.00 for reimbursement of the Tribunal fees.
- 23) The total sum payable including fees and allowed disbursement and preparation cost is £475.65.

Appeal

24) Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Tribunal Judge Peter Ellis