FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/26UL/HIN/2023/0019** **P: PAPER REMOTE**
Property	**:**	**The Bungalow, Great North Road, Hatfield AL9 6DB**
Applicant	**:**	**Mr Daniel Brunt**
Representative	**:**	**Pinder Reaux & Associates solicitors**
Respondent	**:**	**Welwyn Hatfield Borough Council**
Representative	**:**	**Mateusz Plaza, Litigation Officer**
Type of application	**:**	**Rule 13 costs**
Tribunal member(s)	**:**	**Judge Wayte**
Date of decision	**:**	**12 December 2024**

DECISION

The tribunal has decided that:

(1) The respondent must pay the applicant's costs of the proceedings from 1 February 2024, to be assessed under rule 13(7) of the Tribunal Procedure Rules 2013 if not agreed.

(2) The respondent must also reimburse the application fee of £100 within 28 days.

Background

1. The applicant has been the registered owner of the property since 4 April 2002. On 30 October 2018 he entered into an assured tenancy with Dean Meddes, Simon Latchmere and Lewis Selvege. In or about the beginning of 2023 the applicant decided to redevelop the property and on 3 May 2023 he gave the tenants two months' written notice requiring possession in handwritten form.

2. At some point Lewis Selvege left and was replaced by Martin Maloney, without the applicant's knowledge or consent. After the applicant's notice which was addressed to the original tenants, Mr Maloney approached the respondent for help with rehousing and this led to a visit to the property on 30 May 2023 by Emilia Musk, the respondent's Private Sector Housing Officer. She noted several defects and checked council tax records which showed Mr D Meddes as "lead liable" and Mr S Latchmere as "joint liable". On 1 June 2023 a decision was made to complete emergency remedial works and serve an improvement notice.

3. On 12 June 2023 Ms Musk was notified by Mr Maloney that he had moved out of the property and passed her details to "Simon". Ms Musk had not met him during her inspection but she had met Mr Meddes who subsequently allowed access to the engineers who conducted the emergency remedial works at the property on 10 July 2023. He had also applied for help with rehousing on 19 May 2023 and secured new accommodation on 24 July 2023. He had previously contacted the council on 20 July 2023 to confirm that the other tenants had left the property.

4. That same day an Improvement Notice was served on the applicant's solicitors by email and sent by post to the applicant. The Notice required works to install a replacement heating and hot water system and carry out other relatively minor works by 1 September 2023. Both parties' representatives entered into fairly acrimonious correspondence, leading to an administrative challenge to the notice and a stay in respect of the works until 28 October 2023. On 13 October 2023 Mr Plaza wrote to say that the council would not agree any further stay after that date and on 19 October 2023 confirmed that he was instructed to accept service of proceedings on the council's behalf.

5. The following day, the applicant made his application to the tribunal to appeal the Improvement Notice. Although that was outside the time limit for an appeal contained in the Housing Act 2004, I allowed the appeal to proceed and set out below my reasoning, as it is relevant to this decision:

> *(i) ...The application included grounds of appeal which set out the reasons for the delay. In short, these were that the*

applicant considered the notice had been stayed by agreement until 28 October 2023 and had hoped it would be revoked due to the representations made. In particular, the property is unoccupied and in the process of being significantly renovated and adapted. In the circumstances the works identified in the notice are unnecessary. It is not clear whether the applicant intends to relet the property once the renovation works have been completed.

(ii) A copy of the application was sent to the respondent on 13 December 2023. They wrote to the tribunal on 20 December 2023 arguing that the appeal was out of time and insufficient reasons had been provided for an extension. The letter pointed out that the applicant has been advised of the appeal process and the council had maintained a consistent approach in refusing to withdraw or revoke the notice throughout the correspondence with the applicant. Unfortunately, that letter did not deal with the arguments made by the applicant as to the futility of the works, given that the property is unoccupied and undergoing major renovations.

(iii) *....there is clearly a dispute as to whether the council was aware that the property was unoccupied prior to service of the improvement notice – the applicant has referred to evidence held by the council that the last remaining occupant vacated the property in June 2023. In those circumstances and bearing in mind the significant works being undertaken to the property, the requirement that relatively minor works be carried out to the original property in short order seems odd. It is not clear whether the council were aware of the proposed renovation works at the time they issued the notice and evidence will be required in due course. That said, there appears to be little point in enforcing the schedule now. In the circumstances and given that the council had voluntarily stayed the notice until 28 October 2023, the tribunal is satisfied that there are good grounds in this case to extend time and will allow the appeal to proceed.*

6. That decision was included in directions dated on 5 January 2024, those directions included an order that the parties meet or at least communicate with each other within the next two weeks with a view to setline their dispute or narrowing the issues. It is not clear whether either party complied with that order.

7. The council's hearing bundle was sent to the tribunal on 9 February 2024.

8. On 19 March 2024 the applicant's representative made an application for disclosure, in particular the removal of redaction on the copy text messages between their officer Ms Musk and the occupants of the property. On 9 April 2024 I asked the respondent to confirm the identity of the occupants and who else they claimed to be residing in the property at the date of the improvement notice.

9. On 16 April 2024 the council's representative responded maintaining their position that the property was occupied but without answering either question in the tribunal's letter, as they claimed that the correspondence was irrelevant. I disagreed and on 25 April 2024 made an order for disclosure. I also reminded the respondent of the need to co-operate with the tribunal in achieving the overriding objective in rule 3 of the 2013 Rules. That letter led to the first application for costs under rule 13(1) by the applicant.

10. On 7 May 2024 the council released the unredacted messages. They claimed that the officer at the time of inspection and the service of the notice was of the view that the property was occupied by at least two tenants. It was also available to occupy by Mr Meddes until he was rehoused by the council on 24 July 2023. They also provided a screenshot of their Council Tax system which showed that besides Mr Brunt, Mr Selvege was registered for council tax as at 19 December 2023.

11. On 17 May 2024 the applicant's hearing bundle was sent to the respondent and the tribunal.

12. On 24 May 2024 the respondent withdrew the Improvement Notice, following an inspection of the property. That prompted the second application for costs, by letter dated 14 June 2024.

The Law

13. Under Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal may make an order for costs only under section 29(4) of the Tribunal Courts and Enforcement Act 2007 (wasted costs) or if a person has acted unreasonably in bringing, defending or conducting proceedings (unreasonable costs).

14. The leading Upper Tribunal decision on Rule 13(1) unreasonable costs is *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. There are three steps: I must first decide if the respondent acted unreasonably. If so, whether an award of costs should be made and, finally, what amount.

15. 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?".

16. The Court of Appeal has recently considered the test for unreasonable conduct justifying a Rule 13 order in *Kathryn Lea (and others) v GP Ilfracombe Management Company Ltd* [2024] EWCA Civ 1241. That decision makes it clear that a finding of unreasonable conduct does not require vexatious conduct or harassment. The relevant question is the "acid test" in the light of the facts of each case.

17. Under Rule 13(2) the tribunal may also make an order requiring a party to reimburse any other party the whole or part of the tribunal fees. Unlike an order under rule 13(1), the tribunal has a discretion to make the order in all the circumstances of the case. It is not necessary to make any finding as to unreasonable conduct.

The applicant's case

18. In their letter dated 14 June 2024, the applicant's representatives claimed that the withdrawal of the Notice was in reality a late concession by the council that the Notice was invalid, should not have been issued and that it acted unlawfully. They pointed out that the notice had been issued almost 11 months ago and no new information had been provided during the proceedings. They referred to several letters requesting that the Notice be withdrawn both before and after the appeal was sent to the tribunal and to inaccuracies in the witness statement of Emilia Musk, in particular at paragraph 18 (when she stated that she believed the property to be occupied at the time of service). They also relied on the unreasonable failure of the council to produce the relevant texts in an unredacted form, requiring an application and order for disclosure.

19. The applicant had previously also made an application for costs following the disclosure order. Following a request by the tribunal for clarification, they produced costs submissions in support of that application, adding further detail in respect of that issue. Their argument was that the refusal to clarify who the text messages were with was unreasonable behaviour in breach of the respondent's duty to further the overriding objective.

20. They submitted that the respondent's position as a local authority was also a relevant factor. Particularly, the imbalance between the respondent as part of Government and the applicant who is a private individual.

The respondent's case

21. In response to the letter dated 14 June 2024, the respondent produced detailed Costs Submissions and a witness statement by Mr Plaza. They maintained that their behaviour had been reasonable and that withdrawal of a notice upon receipt of updated information is a course of action which is encouraged by the tribunal. They pointed out that in their letter dated 24 May 2024 they stated that they had continued to keep their enforcement approach under review. They enclosed a letter dated 21 February 2024 to the applicant's representatives which proposed an inspection at that stage to which they said there had been no response. That same letter pointed to the lack of evidence that any renovations had started and council tax records which appeared to show another person (Mr Selvege) in occupation of the property as late as December 2023.

22. The respondent maintained that there was a high threshold for awarding costs in the tribunal, emphasising the reference to vexatious and harassing conduct in *Ridehalgh*. They also pointed to specific guidance in *Willow Court* which discouraged orders for costs based on the withdrawal of claims and that tribunals ought not to be over-zealous in detecting unreasonable conduct. Allegations made against Ms Musk were unfounded and should be withdrawn. They maintained that it was appropriate for her to state that she believed the property was occupied on 20 July 2023.

23. A second set of Costs Submissions was produced in response to those of the applicant, focussing on the issue of the redacted texts which were justified due to the desire not to infringe the information rights of the accused or the safety of the occupiers by mentioning them. Again, the argument was that there was nothing in the facts of the case which show the council to have acted unreasonably in the *Willow Court* sense.

The tribunal's decision

24. It seems to me that much of this case was driven by intemperate correspondence between the legal representatives and a focus on the minutiae of whether the property could be considered to be a "dwelling" or an HMO, in order to justify the service of an improvement notice. Suspicion about Ms Musk's motives and an over-zealous interpretation of text messages between her and the last remaining occupants appear to have raised the temperature on both sides, leading to a stand off until sense appears to have prevailed following receipt of the applicant's bundle.

25. That said, the respondent is a public body. Its Corporate Enforcement Policy states that "*Officers will ensure that all enforcement action is justified, auditable, proportionate, authorised and necessary having regard to all the circumstances of the individual case*." That same Policy confirms that enforcement action will be based on risk. Mr Plaza confirms that the respondent keeps their enforcement decisions under review but there is no evidence that the respondent took action to reconsider their notice until after receipt of the applicant's bundle in May 2024.

26. Whether the notice was necessary depended on the risk to any occupants. The respondent was aware that the applicant had served notice seeking possession on his tenants, albeit not in the prescribed form. The decision to issue an Improvement Notice was taken immediately after Ms Musk's inspection on 30 May 2023, when she was under the impression there were three occupants but by the time of the service of the notice, the situation had changed.

27. The disclosure that was eventually provided by the respondent in response to my order was directly relevant to the issue identified by me as to whether the council were aware that the property was unoccupied as at 20 July 2023 when the notice was served. Texts between Martin Maloney and Emilia Musk made it clear that he had vacated the property on 6 June 2023. A screenshot of the Council's Academy system showed that Mr Meddes vacated the property on 30 June 2023 and that the applicant took occupation from that date. Confirmation that no other occupant was listed was sent by Jo Smith of the respondent to Ms Musk on 10 July 2023.

28. In those circumstances, Ms Musk was aware the property was empty prior to service of the notice. If she had applied the respondent's policy properly, there should have been a review of the decision made on 1 June 2023 to issue a notice. It is hard to see that the improvement notice remained necessary as required by the policy and there was clearly no risk to occupants given that the council had confirmed the property was empty. Service of the notice was therefore against the respondent's own policy. It also means that her statement made in these proceedings is inaccurate, as claimed by the applicant. Ms Musk could have had no reasonable belief that the property was occupied on 20 July 2023 bearing in mind the information she received beforehand. Obviously Mr Meddes' call was made that same day but the email from her colleague dated 10 July 2023 is unequivocal.

29. Once the notice had been sent to the applicant's representative the issues became unnecessarily technical, moving away from the policy into debating whether the property was "legally" vacant, capable of being occupied in the future and whether the applicant had provided sufficient evidence of his intention to carry out works. None of that was necessary. In any event, the respondent was aware that Prior Approval had been given by them for the redevelopment in September 2023,

having been sent a copy by the applicant's representatives on 18 October 2023 if not internally. Unfortunately, that letter also contained strong allegations against Ms Musk which appear to have influenced the council to double down on their decision to defend the notice. Instead, the respondent should have inspected the property and/or considered the alternatives to an improvement notice, such as a hazard awareness notice.

30. Once the appeal had been sent to the tribunal there was a further opportunity for the respondent to review their decision, emphasised by me in the directions issued on 5 January 2024. It would appear that nothing was done and neither party have confirmed whether they entered into any further discussions, as ordered. The respondent's Statement of Reasons enclosed with their bundle produced on 9 February 2024 maintains that the respondent "*is firmly of the view that proceeding to enforce the Notice is the appropriate course in order to safeguard the occupants of the Bungalow*". Again, no sensible evidence has been provided to justify that claim at that time. It is true that the respondent subsequently wrote later that month to suggest that they reinspect the property. No inspection was carried out as the applicant's representatives did not respond but there was nothing stopping an external inspection at any time. The respondent appears to have finally inspected the property in May 2024 without making arrangements with the applicant and that is what finally prompted them to withdraw the notice.

31. I consider that a reasonable local authority acting in accordance with its own enforcement policy would have reviewed the decision to issue an Improvement Notice once it was aware the property was vacant and decided against it. Further opportunities to review the notice were also missed and the decision to refuse to extend the stay from 28 October 2023 was similarly unreasonable in the light of the information about the development (Ms Musk having opined that permission was unlikely to be granted). The resistance to open disclosure of relevant information was in breach of the overriding objective and again should have made it clear to the respondent that the notice could not be justified as necessary, something they eventually identified as the "key issue" in their letter dated 21 February 2024.

32. I acknowledge that some of the allegations made by the applicant's representatives had fuelled the fire but as a public body, the respondent needs to hold itself to a higher standard. Although I dismiss the more outlandish allegations made against Ms Musk, she clearly failed to act on information that the tenants had vacated the property. There is no credible evidence that the property has been occupied since 30 June 2023 (I consider the council tax records which appear to indicate that one of the tenants had returned must be an error) and plenty of evidence to support the applicant's assertion that he intends to redevelop the property, making the works in the notice futile.

33. In the circumstances I consider that the respondent has behaved unreasonably in this case. If that sets the bar too low, costs have been wasted due to their failure to act in accordance with their own policy which would also entitle the tribunal to make an order under section 29(4) of the Tribunal Courts and Enforcement Act 2007 (wasted costs). Given that the jurisdiction to award costs under rule 13(1) only applies to conduct in defending proceedings and that to some extent the applicant did not help himself, I consider that the liability for costs should run from 1 February 2024. There is therefore no need to consider the costs in respect of the disclosure application separately.

34. Although the applicant's representatives referred to a costs schedule in their letter dated 14 June 2024, there was no such document attached in their email and the respondent has not addressed the amount of costs sought in either of their submissions. I therefore order the applicant's representative to prepare a new schedule of costs from 1 February 2024 suitable for summary assessment and send it to the respondent and the tribunal by 23 December 2024. It is hoped that the parties will be able to agree costs but if not, the respondent must provide their objections to the applicant and the tribunal by 13 January 2025. The applicant must then provide a bundle for assessment, confirming the extent of any concessions on their part, to the tribunal by 27 January 2025 to enable the costs to be assessed.

35. Given my conclusions above, I also consider that this is an appropriate case to exercise the tribunal's discretion in favour of the applicant in respect of the reimbursement of the application fee.

Name: Judge Wayte **Date:** 13 December 2024

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).