FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AE/HYI/2023/0018**
Property	**:**	**Tabriz Court and Shams Court, Blocks C & E, 5 Olympic Way, Wembley, London, HA9 0NS**
Applicants	**:**	**Sovereign Network Homes**
Representative	**:**	**Winckworth Sherwood LLP**
Respondent	**:**	**HEB Assets Ltd**
Representative	**:**	**DWF Law LLP**
Type of application	**:**	**Rule 13 costs**
Tribunal Member	**:**	**Judge Vance**
Date of Directions	**:**	**17 March 2025**

DECISION

Decision

1. The application for a Rule 13 costs order is refused.

Background

2. By application dated 6 November 2024, the Respondent ("HEB") seeks an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The costs application is brought following my decision of 9 October 2024 concerning an interim application brought by the Applicant ("SNH") dated 11 July

2024, in which SNH sought information and disclosure (the Disclosure Application") within its substantive Remediation Order application. The amount of costs sought is £19,615.80, including the costs of preparing the Rule 13 application itself in the sum of £6,206.90.

3. SNH pursued the Disclosure Application on grounds that the information and documentation it was seeking was required in order for it: (a) to understand the scope of the remedial works HEB intended to carry out to Tabriz and Shams Court; and (b) to be able to provide its residents with as much information regarding the scope and timetable for those works. SNH had sought the following information and documentation.

Information

(1) Confirmation that the Respondent's contractor, Hycgan, and all relevant subcontractors, meet the competency requirements of s.35 Building Safety Act 2002;

(2) Confirmation that Hycgan will act as Principle Designer in respect of both Building Regulations (for the properties) and under the Building Safety Act 2002 (for Tabriz Court);

(3) Evidence of Hycgan's (and any other party as relevant) accreditation under PAS 6871:2022 and PAS 8672:2022;

(4) Confirmation that Marshall Fire is acting as the Respondent's fire engineer and the specific scope of their involvement;

(5) Confirmation that the buildings insurer of the Properties has been provided with the scope of work and:

(a) whether it has confirmed that it is satisfied with the proposed scope of works; and

(b) whether it has been notified/is satisfied that the works have started

(6) Confirmation as to whether the Respondent's fire engineer will issue the EWS1, and the timeframe for this to be provided to the Applicant;

(7) Confirmation that the Applicant will be provided with a collateral warranty from Hycgan and the Respondent's fire engineer;

(8) Confirmation as to when the Respondent anticipates being in a position to submit the initial notice with respect to Tabriz Court;

(9) In respect of new defects identified at Shams Court, answers to the following:

a. What are these defects?
b. Where, precisely, have they been located?
c. Have these defects been identified as endemic across the development and is it considered likely that these defects will be identified at Tabriz Court?
d. If so, are the remedial works for Tabriz Court being designed/programmed on the basis that works to remedy these further defects will be required?

Documentation

(1) Detailed design drawings for the remedial works (with answers to queries raised in the Applicants letter of 18 December 2023, paragraph 2.4 (pp. 1 to 6);

(2) Materials schedule, with confirmation from the Respondent's fire engineer that all materials in the external wall build up will meet the requirements of Approved Document B;

(3) Emergency contact details in the event of an incident occurring on the scaffold outside of working hours;

(4) A detailed programme for remedial works; and

(5) Written Method Statements for any fire in the event of an incident on the scaffold and how this works with concierge/ security.

4. When deciding the Disclosure Application I emphasised that the Tribunal's power to order a person to answer questions, and to disclose documentation is restricted to material that is relevant to the issues in dispute in proceedings. I said that as SNH had not identified in its application why the material sought was relevant to the issues in dispute in the Remediation Order application I would have regard to its case as set out in the Remediation Order application and the Position Statements previously provided by the parties.

5. In my decision, I agreed with the HEB that the information requested at (1) – (3) in paragraph 2 above, were requests for confirmation that the Respondent would comply with applicable law and/or regulations and that the information did not appear to concern issues in dispute in the Remediation Order application. Nor did I consider questions (4)-(7) concerned issues in dispute in the Remediation Order application. I therefore declined to make an

order in respect of (1) – (7). No order was needed in respect of (8) as that material was provided after issue of the Disclosure Application.

6. As to (9) I agreed with SNH that the information provided by HEB by way of monthly Progress Statements had only provided limited and inadequate information and that the questions asked were clearly relevant to issues in the Remediation Order application. I ordered HEB to provide a response.

7. As to the request for disclosure and inspection of documents, I was entirely satisfied that it was appropriate to make an order in respect of the requests at (1) and (4) because the material was relevant to the issues in dispute in the substantive application. I made an order for disclosure by list followed by inspection and a continuous disclosure obligation which was to last until the conclusion of the proceedings. Requests (2), (3) and (5) were refused because they did not concern issues in dispute in the application

8. In my 9 October 2024 decision I rejected HEB's characterisation of the Disclosure Application as a being a fishing expedition, stating that I saw nothing inherently objectionable to the information requested and that I saw no reason to doubt the Applicant's assertion that all SNH was trying to do by pursuing the Application was to understand the scope and timetable for the remedial works so that it could then relay that information to its residents. I said that this appeared to me to be a reasonable approach and that I was unclear why HEB had not voluntarily provided the information sought. I rejected HEB's suggestion that the requests were so onerous as to amount to a distraction to the Respondent's focus on completing the remedial works.

HEB's case

9. HEB points out that SNH only succeed in one out of its nine requests for information, and in only two out of its five requests for disclosure of documents. It submits that to request confirmation that HEB would comply with applicable laws and/or regulations, and to request information and disclosure of documents that did not concern issues in dispute in the Remediation Order application amounted to unreasonable litigation conduct.

10. It also submits that SNH, through its solicitors, Winckworth Sherwood LLP have frequently, and unreasonably, demanded the provision of an excessive amount of information that has led HEB to incur substantial and unwarranted costs. HEB's solicitors, DWF LLP notified Winckworth Sherwood that the extent of the information being sought was unreasonable on several occasions, for example, in letters dated:

(a) 20 December 2023, in which DWF said that SNH was not entitled to the detailed information requested; and

(b) 14 May 2024 in which DWF objected to "continuous requests for further information" which had led to increased legal costs being incurred by HEB.

SNH's case

11. SNH denies any unreasonable conduct, contending that it requested the material because it was critical to its "resident focused" approach through which it was seeking to ensure that residents were given the information that the government had stated they should have. It argues that those parts of its application that were unsuccessful, did not fail because the information sought was irrelevant or privileged, and nor because it was on a fishing expedition. Instead, they failed because I concluded that the Tribunal's rules are not sufficiently broad to allow me to make an order for the material sought. SNH argus that bringing an application which fails m in whole or in part, does not, without more, amount to unreasonable conduct.

12. SNH also submits that its pursuit of the Disclosure Application was the culmination of a process in which it had first sought voluntary provision of this information but from HEB but had been rebuffed. It therefore considered it had no option but to pursue the application and let the Tribunal decide whether or not to make the orders sought.

The Law

13. Rule 13, so far as is relevant, provides as follows:

"Orders for costs, reimbursement of fees and interest on costs
13.—(1) [Subject to paragraph (1ZA), 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 …;

(c) –(d) …….

14. Rule 13(1)(a) is not relevant to this application. Clarification as to how this tribunal should approach a rule 13(1)(b) costs application has been provided in the decision of the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Ms Ratna Alexander* [2016] UKUT (LC). At paragraph 24 of its decision, it approved the guidance given in *Ridehalgh v Horsefeld* [1994] Ch 205 which described "unreasonable" conduct as including conduct that is "vexatious and designed to harass the other side rather than advance

the resolution of the case". It was not enough that the conduct led, in the event, to an unsuccessful outcome.

(7) The Upper Tribunal then went on to set out a three-stage approach to assist in decision making in Rule 13 costs applications. The first stage is whether a person has acted unreasonably. This is an essential pre-condition of the power to award costs under the rule. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable. This requires the application of an objective standard of conduct to the facts of the case. The second and third stages involve the exercise of discretion on the part of the tribunal. At the second stage the tribunal must consider whether, in the light of the unreasonable conduct identified, it ought to make an order for costs. The third stage is what the terms of the order should be.

(8) In the recent Court of Appeal decision in *Lea and Others v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241, the Court of Appeal affirmed the previous decisions in *Ridehalgh* and *Willow Court* but clarified that in neither case was it said that that unreasonable conduct *must* involve vexatious conduct or harassment; that is just one way in which unreasonable conduct may be established. L J Coulson said [15] that sufficient guidance in respect of rule 13(1)(b) is set out in *Ridehalgh* and *Willow Court* but a good practical rule was for the tribunal to ask whether a reasonable person acting reasonably would have acted in this way? Is there a reasonable explanation for the conduct in issue?

Reasons for Decision

15. It is important to remember that the Tribunal is not a costs-shifting jurisdiction and the default position is that each party bears their own costs. The Tribunal can nevertheless order costs to be paid where a party has acted unreasonably. In my determination, however, SNH did not act unreasonably in bringing the Disclosure Application. HEB correctly points out that SNH failed in the majority of its requests in both categories, but that does not, in itself, mean that the material requested had been unreasonably sought.

16. HEB is correct that much of the material that SNH sought in its Disclosure Application did not concern issues in dispute in the Remediation Order application. However, in my determination there was a reasonable explanation for SNH issuing its application. Its solicitors, Winckworth Sherwood, had requested the material in its letter to DWF dated 26 April 2024 **[42]**. As Winckworth Sherwood stated in that letter I had, in my directions of 22 April 2024 stated that HEB should be provided with "sufficient information to be able to decide whether it is content with the scope and progress of works", and that this should involve a "regular flow of reasonably required information from the Respondent to the

Applicant concerning both the scope of works and the timeline for progression"

17. DWF rejected that request in its response of 14 May 2024 **[46]**, objecting to the costs HEB was incurring in responding to SNH's requests for information, and suggesting that any enquiries should be directed to Mr Naser at Wembley Properties, HEB's managing agents or to the liaison officer it had appointed to deal with the remediation works. Following that indication, Mr Manley at SNH then wrote directly to the liaison officer on 16 May 2024 **[42]** requesting information but received no response to his request, despite a chaser email on 28 May 2024 **[42]**.

18. Looking at the matter objectively, given the emphasis I placed in my directions of 22 April 2024 on HEB providing SNG with a regular flow of information, and given the lack of response to Mr Manley's emails of 16 and 24 May 2024 when SNH did as DWF had suggested and redirected its enquiries to the liaison officer, I do not consider it unreasonable for SNH to have proceeded issued its Disclosure Application on 11 July 2024. Whilst its solicitors do not appear to have fully appreciated that the limitations placed in the Tribunal's rules are such that it can only make an order where material is relevant to issues specifically in dispute in proceedings that misunderstanding does not, in my assessment, amount to unreasonable litigation conduct.

19. In seeking the material in issue SNH was clearly seeking to reassure itself, and its residents, that the safeguards introduced by the 2022 Act were going to be met in respect of the intended works at Tabriz and Shams Court. An objective observer would, in my view, conclude that to do so was reasonable, given the accepted presence of unsafe cladding material present at both buildings and the consequential fire risks posed. I accept that the information sought was detailed, but I do not consider an objective observer would have considered it unduly onerous given that context. As SNH pointed out when making the Disclosure Application the Code of Practice for the remediation of residential buildings published by the Ministry of Housing, Communities & Local Government stresses that residents' needs are at the heart of all remediation and that they should be provided with appropriate information and meaningful engagement (see para. 3 of my 9 October 2024 decision).

20. As I have found that there is no unreasonable conduct by SNH, there is no need to consider stages 2 and 3 of the *Willow Court* analysis. I will, however, record that if I am wrong to have found that there was no unreasonable conduct then I would, at stage 2, and having regard to all the circumstances of the case have declined to make a Rule 13 costs order. I would have had regard to the lack of response to Mr Manley's emails of 16 and 24 May 2024, and the fact that as SNH was successful in part of its application it is, as Mr Bates KC submits on behalf of SNH, hard to see why any other sanction is warranted.

Most, if not all of the costs incurred by HEB in resisting the Disclosure Application would, it appears to me, have been incurred in any event given that HEB resisted the application in its totality in general terms, without distinguishing between the different heads of material sought, and without identifying the limitations imposed by the Tribunal's rules that led to the refusal of much of the Disclosure Application.

Amran Vance
17 March 2025

RIGHTS OF APPEAL

The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

If a party wishes to appeal against 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.