FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HIN/2024/0001**
Property	**:**	**Princes Park Apartments, 52, Prince of Wales Road, London, Nw5 3LN**
Applicant	**:**	**Hazlewood Properties Limited**
Representative	**:**	**Mr Aaron Walder (Counsel) instructed by Nicholas & Co**
Respondent/Council	**:**	**London Borough of Camden**
Representative	**:**	**Mr Robert Bowker (Counsel) instructed by inhouse Legal Team**
Type of application	**:**	**Respondent's application for rule 13 costs** rule 13(1)(b) Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013
Tribunal	**:**	**Deputy Regional Judge Nikki Carr** **Regional Surveyor Helen Bowers MRICS** **Mr Andrew Gee RIBA**
Date of Decision	**:**	**31 March 2025**

DECISION

DECISION

1. The Applicant Landlord must pay the Respondent Local Authority's costs summarily assessed in the sum of £5,000 by 4pm on 29 April 2025.

REASONS

Background

1. By decision dated 9 October 2024, the Tribunal confirmed the Improvement Notice issued by the London Borough of Camden ('LHA') on

Hazlewood Properties Limited ('the Landlord') on 19 October 2023 in respect of Princes Park Apartments, 52 Prince of Wales Road, London NW5 3LN, an 8-storey Building with two Blocks developed by Cornwall Overseas Developments Limited in or around 2013-2014 ('the Building'). The Tribunal decision ('the Decision') can be found here: Princes Park Apartments improvement Notice Decision Final.

2. By application sent to the Tribunal on 4 November 2024, the LHA made an application for costs pursuant to rule 13(1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules), to be determined by the Tribunal's paper process.

Grounds of the application

3. Mr Bowker, for the LHA, sets out the grounds on which the LHA submits that the Landlord acted unreasonably as follows:

   (a) Tendering Mr Goodwin as its only witness of fact;

   (b) Giving a contradictory and misleading account of the work it was doing; and

   (c) The manner in which it instructed Ms Bernadette Barker.

4. The LHA sought to emphasize that it is not contending *only* that the Landlord presented its case aggressively or unrealistically, that Mr Goodwin's evidence was inadequate or evasive, or that Ms Barker's instructions were unhelpful or biased, but that the conduct in so doing crossed a clear line of demarcation between what is reasonable and unreasonable, assessed objectively.

Law

5. Rule 13 sets out, so far as relevant, as follows:

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

   (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…

6. The now well-trodden test in *Willow Court Management Co (1985) Limited v Alexander* [2016] UKUT 290 (LC) sets out as follows:

   28. At the first stage the question is whether a person has acted unreasonably. 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 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 stage it is essential for the tribunal to consider whether, in light of the unreasonable conduct it has found to be 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 the order should be.

7. In *Ridehalgh v Horsefield & Anr* [1994] Ch 205 (CA) (itself dealing with wasted costs), at paras E-G 232 it was said that the question of whether conduct is unreasonable turns on whether it permits of a reasonable explanation:

   "Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes 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 a practitioner's judgment, but it is not unreasonable.

8. In *Lea & Ors v GP Ilfracombe Management Company Limited* [2024] EWCA Civ 1241, it was noted that for conduct to be unreasonable it did not have to also be vexatious or designed to harass (¶9 and 10), though it could include such conduct. They are but one way in which unreasonable conduct may be established. The terms are not to be elided. The Tribunal's discretion, as read together with section 29 Tribunal, Courts and Enforcement Act 2007 is wider than that:

   11. To that extent, therefore, the UT in Assethold Limited v Lessees of Flats 1-14 Corben Mews *[2023] UKUT 71 (LC); [2023] L.&T.R.12, at [62], was wrong to suggest that an order for costs under rule 13(1)(b) will only be made where the paying party's behaviour has been vexatious, and designed to harass the other party rather than to advance the resolution of the case. Moreover, although any citation of* Ridehalgh *in this context must bear in mind that there are three overlapping requirements to be met for a wasted costs order, of which unreasonable conduct is only one, that makes no material difference to the applicable test for unreasonable conduct, which is that articulated by Sir Thomas Bingham MR.*

   12. The Ridehalgh *approach was expressly approved and applied in* Dammerman v Lanyon Bowdler LLP *[2017] EWCA Civ 269; [2017] CP REP 25, at [30]-[31], which was concerned with the similar jurisdiction under CPR 27.14(2)(g) to award costs in small claims litigation where there had been unreasonable conduct. The Court of Appeal confirmed at [30] and [31] that the test to be applied when considering unreasonable conduct in the context of small claims was that set out in* Ridehalgh.

13. Ridehalgh *and* Willow Court *emphasise the fact-specific nature of the test for unreasonable conduct. It is therefore not appropriate for this court to give more general guidance as to what does or does not constitute unreasonable behaviour, a point also made in* Dammerman. *That is also consistent with the policy that the courts should avoid going beyond the CPR to identify rules, default positions, presumptions, starting points and the like, when addressing costs disputes: see* Excelsior Commercial & Industrial Holdings Ltd v Salisbury *[2002] EWCA Civ 879 at [32] and* Thakkar v Mican *[2024] EWCA Civ 552 at [20].*

…

15. Subject to what I have said above, sufficient guidance in respect of rule 13(1)(b) is set out in Ridehalgh *and* Willow Court. *A good practical rule is for the tribunal to ask: would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue?*

Background context

9. As stated in *Lea*, context is everything in a rule 13 application. It is therefore necessary to summarise the basis on which the Landlord brought its appeal, to contextualise the submissions made by the LHA.

10. By its application, the Landlord sought to appeal the Improvement Notice on a number of different grounds. Very shortly before the hearing, the issues narrowed substantially. The Tribunal was called on to decide (a) a contained point in connection with one of the conditions imposed by the IN regarding the zinc cladding (requiring assessment of competing expert evidence), and (b) the remaining dispute turned on whether the c.15 months provided by the LHA in the IN for compliance with its requirements was "irrational" and therefore wrong, as pleaded by the Landlord in its statement of case dated 9 November 2024.

11. Having been agreed between the parties, the matters regarding the concierge area and extent of the demise were not ones that required the Tribunal's determination, even if they were addressed by Mr Walder in a skeleton argument, contrary to what he says in the Landlord's response at paragraph 16 (and as reflected in paragraphs 5 and 6 of our decision). They were nevertheless parts of the litigation that the parties had to prepare for, just as given the late stage capitulation of the Landlord in accepting that the IN would be substantially confirmed, the LHA had been pushed to incur costs.

12. This application however, does not turn on that conduct. We must make an assessment of whether, on the grounds set out by the LHA, the Landlord's conduct was objectively unreasonable. That must be assessed against its particular facts.

13. Our findings in ¶¶51 – 102 form the background to the application.

14. In summary, we found that Mr Goodwin was "*a singularly unimpressive witness*", who either could not or would not give evidence of his involvement at or around the time that the LHA started IN investigations in earnest, or indeed subsequently. In particular, despite saying he became "*involved in April 2023*" he could give no evidence about what in particular his involvement had been. He attempted repeatedly to try to persuade us that the Landlord "*did not know what* [they] *need*[ed] *to do*" and so was incapable of starting even preparations for any of the IN works until a Tribunal decision, in the face of the contemporaneous evidence including the Scope of Works and Progress Report (which he sought to ignore or to suggest he knew nothing about despite being the commercial director of the company, Bespoke Contrax, that had prepared the report and was carrying out the works). He attempted to mislead us regarding his position in Bespoke Contrax. He sought to mislead us that he knew nothing about what was happening in those works, despite a week earlier at the inspection having told us what the works involved. We found that the Landlord had made a deliberate choice not to progress any of the preparatory work that had been undertaken between at latest June 2021 – April 2023, not least because it considered it to be "of no benefit" to it.

15. Regarding Ms Baker, we found that her independence had been compromised by unreported meetings by email or phone with Mr Goodwin, and use of Mr Goodwin's purported experience in place of her own, leading her to adopt his stance that the Landlord 'did not know what it needed to do'. We found that key reports and information that she said she had taken into account were not disclosed with her expert report even though she said it was informed by them. We found that in any event, the period she suggested of between 12-18 months for pre-construction phases went beyond the cautious to the exaggerated, and that there was no foundation for an estimate of 48-52 months for the entire project, not least because she had "*focussed all of her energies on the second question Nicholas and Co asked her on 11 July 2024…, after her two meetings with Mr Goodwin, which was the focus on whether 90 days to commence 'works' was reasonable*".

16. As the Applicant in the proceedings, it is reasonable to infer that the Landlord knew (not least because it was advised throughout these proceedings by solicitors, Nicholas and Co, and counsel Mr Walder), that it had the burden of showing that the timeframe was "wrong" (in the *London Borough of Waltham Forest v Hussain* [2023] EWCA Civ 733 sense) – indeed the Landlord pleaded that it was "impossible" to meet.

17. It is reasonable to infer that the Landlord knew that the full background to the making of the IN, including their email discussions and reassurances given to the LHA, would need to be explained if the Landlord relied on a different set of facts from that those contemporaneous documents demonstrated.

18. It is reasonable to infer that the Landlord knew it would need to provide evidence demonstrating what it said the true position was *vis* its ability and preparations to undertake the works, in light of the

contemporaneous email discussions and reassurances, both to its instructed expert and to the Tribunal.

19. It is also reasonable to infer that the Landlord knew that the Tribunal would determine the case having regard to matters of which the LHA was unaware if they were relevant to the LHA's decision (para 15(2) of Schedule 1 to the Housing Act 2004), into which category the second Type 4 Risk Assessment dated 6 November 2023 and associated Scope of Works dated 23 November 2023 would fall.

20. It is therefore reasonable to infer that the Landlord knew that it would have to address these matters in order to have a realistic prospect of convincing the Tribunal that the LHA's decision to impose the timescales that it did was "wrong".

21. It is against those facts and inferences that the Tribunal is called to assess the particular matters of complaint.

(a) Is there a reasonable explanation for the conduct in question?

(i) Tendering Mr Goodwin as the only witness of fact and giving a contradictory and misleading account of the work it was doing.

22. The reality of the LHA's argument is that its grounds (a) and (b) are two sides of the same coin. Mr Goodwin was tendered as the Landlord's only witness, and purported in his written evidence to have been familiar with the Building as its "Employers Representative" offering "services of project management" to the Landlord since 2010. He further purported to have become involved as regards the LHA's investigations and, ultimately, IN, in "April 2023". It is trite to say that Mr Goodwin was the agent of the Landlord in his capacity as its sole witness. His tendering as a witness cannot properly be disconnected from the evidence that he gave. We therefore deal with these two grounds together.

23. In summary, the LHA says that it is reasonable to infer that tendering Mr Goodwin as a witness, in light of the findings we made, was a deliberate attempt to avoid presenting key facts to the Tribunal, and his often misleading evidence was given to obfuscate when presented with uncomfortable facts. That, the LHA says, is all the more unreasonable in this case, where people's safety in and about the Building is at stake.

24. The Landlord says that the Tribunal is an adversarial court system. The Landlord was entitled to tender the witness it did. If the Tribunal did not accept Mr Goodwin's evidence, then the Tribunal would find against the Landlord (as it did). If it had proffered no witness, the outcome would have been the same. So far as the particular evidence is concerned, the Tribunal merely made findings against the evidence given, as is its function. That informed the reasonable timeframe for what was a by-then admitted schedule of works. It asserts that it need proffer no further explanation than that, as it is for the LHA to establish that the conduct complained of is unreasonable.

Decision

25. Would a reasonable person in the Landlord's shoes, acting reasonably, have tendered Mr Goodwin as their only witness of fact?

26. We do not accept that there is a higher duty on the Landlord in this case, just because of the type of dispute involved. We consider that to make such a distinction would be to muddy the waters of the costs question we must answer. It would offend against what the Court of Appeal said in paragraph 12 of *Lea*.

27. Despite the slightly cumbersome way in which the LHA argument is presented, it is clear that what the LHA is saying is that in relying on Mr Goodwin's evidence to establish its burden of proof, the Landlord knew or ought reasonably to have known that it could not or would not meet that burden. It nevertheless tendered Mr Goodwin as a witness, whose evidence not only did not address the issue of what had happened in the lead up to the IN but sought to deliberately obfuscate (as we found) what had happened since. That was more than merely putting forward a hopeless but genuine case.

28. That is *prima facie* unreasonable, as even the most optimistic or unrealistic Landlord ought to realise it would incur costs and time for nought.

29. While it is right to say that the Tribunal is adversarial, and that parties are entitled to offer up as a witness whomever they want, that does not mean that their? decision to do so can never be unreasonable in the context of the conduct of the litigation. One would not say that it would be reasonable to just pick a man on the street to be a witness in something with which he had no familiarity other than documents that might be shown to him for the purpose. Few would dispute that would be unreasonable. The fact is that in these proceedings, on a very generous interpretation of Mr Goodwin's evidence (leaving out of the equation the ways in which we found him specifically to have tried to mislead or otherwise create a false impression of the true facts), that is tantamount to what the Landlord did, albeit that Mr Goodwin purported to have a connection to these works since April 2023 that remained wholly unclear by the end of the hearing.

30. It is also correct to say that the outcome would have been no different if Mr Goodwin had not given evidence, but that is not because "*the majority of his evidence was simply fact-based setting of the scene, from which the expert evidence dealt with the detail…*" (Mr Walder ¶17). Rather, (as we identified in the hearing on 26 September 2024) Mr Goodwin's witness statement does not set the scene for the appeal against the IN – it does not address any personal knowledge on the key period (as acknowledged by Mr Walder at the hearing), nor set out properly from where the information contained in it is derived. It ignores all of the contemporaneous evidence that existed between the parties and sought to present a reality that did not match with the facts supported by that contemporaneous evidence.

31. Nor was this assisted by Mr Goodwin's live evidence, which was not only internally inconsistent but inconsistent with the Witness Statement he had given. Despite it being the case that Mr Goodwin refused to identify to the Tribunal the extent of his involvement in the Building, or in the required works, he nevertheless sought to continue to put forward a position that the Landlord "*did not know what to do*", in the face of the Landlord's own documents that he had been provided with by the Landlord's own solicitors even if (which we did not accept) he had not been familiar with them previously.

32. *That* is the position that consequently 'set the scene' for Ms Barker's expert report and live evidence (which we will deal with in due course). It was against that narrative she sought to give her evidence, not against 'simple fact-based scene setting'.

33. It is because of that that the LHA has been put to (at least part of) the expense of these proceedings.

34. The Landlord's response is, in effect, to shrug its shoulders and say 'we can choose whom we like as our witness' and 'anyway, it wouldn't have come out differently'. That ignores the influence that Mr Goodwin had on Ms Barker's evidence, and the fact that both the evidence and the hearing were extended both in preparation and hearing time for all concerned.

35. In that context, the conduct calls for an explanation beyond 'it's up to us who we call'. The evidence goes to the heart of the dispute the LHA had to meet, i.e. whether the IN was 'irrational' to impose the timeframe it did and what was the reasonable timeframe for the works. It goes beyond a witness merely not coming up to proof. The fact that Mr Walder acknowledges that Mr Goodwin's evidence did nothing in pursuit of the appeal – 'it would have come out the same absent him' – merely serves to underscore rather than undermine the argument. Pursuing an appeal against the timeframe imposed on the basis of the spurious and incomplete facts proffered by Mr Goodwin is *prima facie* unreasonable.

36. No such explanation has been given.

37. One permissible inference, which we draw in the context of the factual background of this case and the years of delay and misrepresentations to the LHA, is that the Landlord was seeking to further delay doing works at the property as long as possible (as submitted by Mr Bowker in paragraph 13 of the grounds), and by its approach to the evidence drew the dispute to its ultimate maximum stretch.

38. In those circumstances, we are satisfied that the conduct, so far as tendering Mr Goodwin as the only witness of fact to give the evidence he did, bears of no reasonable explanation. No reasonable Landlord, advised as this Landlord was, could reasonably consider Mr Goodwin to be the appropriate witness to meet its burden of proof on the issue. The conduct is objectively unreasonable. It permitted the Landlord to delay further works that have been required since 2019. That is consistent with the Landlord's approach

that, as we found, it was not unable but unwilling to do works it knew it was required to do where it perceived no benefit to it in doing so.

(ii) Ms Barker's evidence

39. The LHA's submission on this ground is that the Landlord failed, through its solicitors and Mr Goodwin, to ensure that Ms Barker complied with her duty to the Tribunal in accordance with rule 19(1) of the Rules. It relies on ¶¶84 – 95 of the Decision. The LHA says that she was fundamentally set on the wrong course by the Landlord "*attitude to the evidence*" (by which we infer Mr Bowker is building on the matters above in relation to Mr Goodwin). Had, the LHA says, "*the Landlord ensured Ms Barker was correctly instructed and adhered to her rule 19(1) duty, it is likely it is likely that her oral evidence would have been compliant*."

40. Mr Walder submits that submission is fundamentally misconceived. It was not for the Landlord to ensure Ms Barker presented her evidence in one manner or another. She is an eminently qualified expert, there is nothing that the LHA points to that was untoward or incorrect in her instructions, and for the Landlord's solicitor to influence or steer Ms Barker in one direction or another would have been manifestly improper.

Decision

41. We agree with the Landlord. Ms Barker, as an expert, has an independent duty to the Tribunal. It is for her to ensure that she meets those professional standards. There is nothing in the evidence to suggest that the Landlord's solicitor encouraged her not to exercise her independence on the issue she was to provide her report on. Nor, properly engaging in her role, would she have permitted any such encouragement to interfere with her expert duties.

42. While her expert opinion was found to be fundamentally undermined by the private discussions she had with Mr Goodwin, and was clearly predicated on them, it was for her to ensure her compliance with her rule 19 obligations, rather than permit Mr Goodwin to influence her.

43. Ultimately, in any event, Ms Barker's evidence was given on the basis of starting from a start date and it taking 4 ½ years to complete planning and execution of the works. The Tribunal rejected that evidence on its own merits and not because of what Mr Goodwin appears to have told Ms Barker about what progress had or had not made towards beginning the project.

44. Ms Barker's evidence is qualitatively different from that of Mr Goodwin. Expert evidence is supposed to be given on an independent and neutral basis exercising the expert's own expertise. The fact that we found that it was not in this case, and that Ms Barker's evidence was unpersuasive, falls squarely at the door of Ms Barker rather than the Landlord. The Landlord was entitled to instruct an expert, and exposing the expertise as tainted by the influence of Mr Goodwin is not the whole answer.

45. We find that it was not unreasonable to instruct an expert in programming, that Ms Barker purported to have the relevant expertise, and the unfortunate focus of Nicholas & Co on the preparatory works in its letter of 11 July 2024 could easily have been overcome by Ms Barker if her report was focussed on all of the instructions she was given and her own duty to the Tribunal. Unlike in Mr Goodwin's case, we cannot say that the Landlord or Nicholas & Co ought reasonably to have known Ms Barker would not adhere to that duty, since it had no grounds for involvement in drafting up her report.

(b) <u>Should an order be made?</u>

46. The LHA states that a costs order should be made for all of the reasons above. The Landlord did not, in the circumstances, conduct itself in accordance with the overriding objective rule 3(4) (its duty to the Tribunal).

47. The Landlord says that, even if the conduct is found to be unreasonable, no order should be made, as there was no discernible effect of the outcome of the case.

Decision

48. We are satisfied an order should be made. The outcome of the case is not the sole focus, and the Landlord should not be rewarded for failing to recognise that, regardless of whether the outcome would or would not have been different if the Landlord had not engaged in the unreasonable conduct, costs and time have been incurred by all involved by dint of that conduct. For example, the hearing could have been shorter, and the LHA would not have had to prepare the witness statements exhibiting all of the pre-IN correspondence demonstrating what the true position was.

(c) <u>What should the terms of the order be?</u>

49. By its application, the LHA seeks its full costs of the totality of counsel and his in-house instructing fee earner, incurred in the case.

50. The Landlord states that is wrong in principle. The order sought is disproportionate. The conduct referred to relates to only one issue.

Decision

51. We agree with the Landlord. Regardless of the merits of the other matters substantially agreed between the parties at the eleventh hour, the parties had to prepare for a case wider than simply the purportedly 'irrational' timeframe imposed by the IN. At various points the Landlord took issue with the legality of the IN, the construction of the lease obligations, whether any works were needed *at all*, and the standard of those works. Those are not matters which the LHA relies on in this application and therefore the whole of the costs incurred in the proceedings cannot fall to be awarded in the LHA's favour.

52. Where we part ways with the Landlord is that there were four issues remaining to be decided by the Tribunal at the hearing. That is not the case; there were only two.

53. Nevertheless, the costs of the hearing are not the only costs. We must take into account that the question of the timescales was but one issue in a number through the course of the litigation, and Mr Goodwin's part in the argument was not the only evidence that required addressing. Ms Barker's evidence also no doubt incurred costs both in preparing for and at the hearing, both for Ms Roberts and for Mr Bowker.

54. In paragraph 1 of the directions, we stated that we considered this matter to be suitable for summary assessment. Both parties invite us to order detailed assessment. We refuse that invitation; it would be disproportionate in light of the limited finding we have made.

55. Looking at the time recordings and fee-note provided, we consider the matter in the round and take a broad brush approach.

56. Doing the best we can with the information provided, we consider that the reasonable and proportionate sum of costs that the Landlord should be ordered to pay the LHA is £5,000.00, taking into account overlap between the issues, counsel and his instructing's time recordings/fee-notes, and the extent to which Mr Goodwin's evidence impacted the hearing time and preparations.

Conclusion

57. In the circumstances, we find that the Landlord conducted this case unreasonably for the reasons stated, and that we should and do make an order that the Landlord pays to the LHA costs assessed summarily in the sum of £5,000.00 pursuant to rule 13 of the Rules.

Name: Judge Nikki Carr **Date:** 31 March 2025

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).