



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

Case reference : **CAM/42UD/HNA/2024/0002**

Property : **170 Cemetery Road, Ipswich, IP4 2HL**

Applicant : **Chelmsford Cars & Commercials Limited**

Representative : **Holmes & Hills LLP**

Respondent : **Ipswich Borough Council**

Representative : **Mr O Osinuga, counsel**

Type of application : **Application made under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

Tribunal members : **First-tier Tribunal Judge K Gray
Tribunal Member Mr O Miller**

Venue : **Decided on the papers**

Date of decision : **5 May 2025**

DECISION

Decisions of the tribunal

- (1) The Appellant's application for an order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is dismissed.

Background

1. On 6 December 2023, the Respondent local authority made a decision to impose a financial penalty upon the Appellant landlord in respect of its failure to comply with an improvement notice relating to issues with the heating system and the insulation at the subject property.
2. On 21 December 2023, the Appellant landlord made an application to the tribunal under paragraph 10 of schedule 13A of the Housing Act 2004 to appeal that decision.
3. By a decision dated 7 March 2025, which followed a hearing on 26 February 2025, the tribunal cancelled the financial penalty as it was not satisfied beyond reasonable doubt that the Appellant had committed an offence under section 30 of the Housing Act 2004.

The application

4. By an application dated 4 April 2025, the Appellant landlord now seeks an order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent pay the Appellant's costs of the application, to be assessed if not agreed.
5. The Respondent opposes the application and relies on written submissions dated 10 April 2025.
6. Both parties confirmed on 25 and 30 April 2025 respectively their agreement to the application being dealt with on the papers, and we are content that we are able to do so as both parties have made fulsome written submissions.

Legal framework

7. By rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal may make an order in respect of costs only ... if a person has acted unreasonably in bringing, defending or conducting proceedings.
8. The approach that the tribunal ought to take to such applications was discussed extensively in *Willow Court Management Company* (1985)

Limited v Mrs Ratna Alexander [2016] UKUT 290 (LC). The relevant points are as follows:

- (i) 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.
- (ii) “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.
- (iii) 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?
- (iv) Tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings.
- (v) 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

The tribunal’s decision

9. The application is dismissed.

Reasons for the tribunal’s decision

10. First, the Appellant says that the Respondent acted unreasonably in failing to adduce “any” evidence to support its position in respect of the issues to be determined by the tribunal.

11. In fact, the Respondent led written and oral evidence from Mr Grimley, a Private Sector Housing Officer. Mr Grimley gave two witness statements and attended the hearing and was cross-examined. Mr Grimley's evidence was necessarily limited to what was said in the notes and other documents on the Respondent's file for the property, as he had taken over this case after his predecessor, who no longer worked for the Respondent, had decided that a financial penalty should be imposed. His evidence of his limited involvement with the case was one of the reasons why the tribunal was not satisfied beyond reasonable doubt that the Appellant had committed an offence under section 30 of the Housing Act 2004, though he did his best to assist the tribunal.
12. We do not consider that the Respondent has behaved unreasonably in this respect. The Respondent did not call Mr Grimley's predecessor to give evidence because he no longer worked for the Respondent. Though this is unfortunate, it is in our judgment a reasonable explanation.
13. Secondly, the Appellant says that the evidence adduced on behalf of the Appellant (that is to say, the written and oral evidence of Mr Sharp) was unchallenged.
14. This is not an entirely accurate submission. Though there was limited cross-examination of Mr Sharp, it is not correct to say that his evidence was wholly unchallenged. Key elements of Mr Sharp's evidence were not set out in his witness statement and were only revealed as a result of the questions asked by counsel instructed by the Respondent and by the tribunal. The decision about how to conduct cross-examination at trial is a finely balanced one. Where oral evidence has not been foreshadowed in a witness statement, it is difficult for that evidence to be meaningfully challenged in cross-examination. We find nothing in the suggestion that the Respondent behaved unreasonably in this respect.
15. Thirdly, the Appellant says that his case was consistent with the documentary evidence. It is difficult to understand what conduct on the part of the Respondent is said to have been unreasonable in this respect. If it is said that the Respondent failed to stand back and evaluate properly the strengths and weaknesses of the parties' cases when considered as a whole, then this is in our judgment hardly unreasonable behaviour. It is a feature of ordinary litigation that there are winners and losers and that the tribunal may take a different view of the evidence to the one taken by one or other of the parties. We remind ourselves that it is not enough that the conduct leads to an unsuccessful outcome. We are not satisfied that the Respondent has behaved unreasonably as asserted by the Appellant.
16. Fourthly, the Appellant asserts that the Respondent failed to assess the internal temperature of the property before issuing the financial penalty notice. This is not an allegation that relates to the Respondent's conduct in the proceedings, and in any event would not have been determinative

of the issues raised in this case. The improvement notice also required the Appellant to “*ensure that there is a depth of 280mm [of insulation] over the full area of the loft*”. Mr Sharp did not give any written evidence about the insulation that we found he installed in or around June 2022. He did not refer to these works until he gave his oral evidence at the hearing. We are not satisfied that the Respondent has behaved unreasonably as asserted.

17. Fifthly, the Appellant says that the Respondent “*unreasonably continued to pursue a case that the Applicant could reasonably have been expected, following the events of August 2022, to evict the tenants from the property to carry out all of the works as specified by the Respondent in the Improvement Notice*”.
18. However, the proposed eviction of the Appellant’s tenants was relevant to the Appellant’s case that he had a reasonable excuse for his alleged offending. This was a matter for the Appellant to prove. This potential defence was not referred to in the Appellant’s letter to the Respondent dated 7 September 2023, in which the Appellant made written representations about the Respondent’s proposal to impose a financial penalty. Nor was it advanced with any degree of particularity in the Appellant’s grounds of appeal. Though the Respondent’s submission may have been an ambitious one, we do not accept that it was unreasonably advanced in the circumstances.
19. We disagree with the Appellant’s characterisation of this case set out in paragraph 12 of the application for costs. We consider that, in fact, this was a case where the tribunal carefully considered the evidence of both sides before concluding that the Appellant’s case was to be preferred and that the relevant offence had not been established to the higher standard of proof.
20. For all these reasons, we dismiss the application.

Name:	First-tier Tribunal Judge Gray	Date: 5 May 2025
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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).