FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AS/RTB/2025/0014**
Property	**:**	**31 Ruislip Court, Raliegh Close, Ruislip HA4 6JP**
Applicant	**:**	**London Borough of Hillingdon**
Representative	**:**	**Nesreen Gheita, solicitor**
First Respondent	**:**	**Anisa Bakar**
Second Respondent	**:**	**Joshua Stamp-Simon (Counsel)**
Type of application	**:**	**For an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal member	**:**	**Mrs E Ratcliff MRICS, Regional Surveyor** **Judge J Stewart**
Date of order	**:**	**13 October 2026**

COSTS DECISION

Decisions of the Tribunal

The Applicant's costs application under Rule 13(1)(a) and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") is dismissed.

The application

1. By an application dated 10 April 2026 the Applicant applied for a costs order:

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a. under rule 13(1)(a) (wasted costs) of the Rules against the Respondent and Respondent's Counsel's chamber, and
b. Under rule 13(1)(b) against the Respondent for the Applicant's legal costs.

2. The Applicant is claiming for a total of £2,873.33 or such other sum as the Tribunal considers just.

Background

3. On 2 May 2025 the First Respondent, Anisa Bakar, made an application to the Tribunal to appeal a decision by the Applicant in this case, London Borough of Hillingdon, to deny her the Right to Buy 31 Ruislip Court, Raleigh Close, Ruislip HA4 6JP ("the Property"). The denial was dated 28 February 2025.

4. The Tribunal has jurisdiction over denials solely on the ground in paragraph 11 of Schedule 5 to the Housing Act 1985 ("the 1985 Act"). Paragraph 11 allows for denials of a Right to Buy on the ground that a dwelling is particularly suitable for occupation by elderly persons.

5. In a hearing on 27 March 2025, the First Respondent was represented by the Second Respondent, Mr Stamp-Simon (of Counsel). During the hearing it became clear that the reason for the denial of the right to buy was on grounds other than Paragraph 11. The Applicant then asked to withdraw her application, and the Tribunal gave consent to that withdrawal on 10 April 2026.

Applicant's case

6. The basis of the Applicant's case is as follows:

<u>Rule 13(1)(a)</u>

a. The First Respondent's legal representatives failed to notify the Applicant that they had been instructed, and a skeleton argument and witness statement were only produced ten minutes before the hearing started.

b. The Second Respondent ought to have known the Applicant's contact details and engaged appropriately.

c. It was unreasonable for the First Respondent to pursue the appeal when it should have been clear that the Tribunal lacked jurisdiction. The Second Respondent should not have accepted instructions in circumstances where the appeal was meritless and bound to fail.

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d. The Second Respondent ought to have appreciated and advised his client, the First Respondent, that the appeal was out of time as this was set out in the Applicant's correspondence dated 17 March 2026.

e. The Second Respondent's conduct in withdrawing the appeal at the very last stage significantly increased the time and costs incurred in dealing with the matter and was unreasonable.

f. That Second Respondent said he was seeking instructions from solicitors, but the Applicant claims that the solicitors mentioned on the witness statement have never been on record and the Second Respondent was instructed directly. The Second Respondent should be put on strict proof of which solicitors he claimed he sought instructions form during the hearing.

Rule 13(1)(b)

g. The Applicant relied on three grounds:

i. The appeal had been brought under the incorrect provision of the Housing Act 1985.

ii. The First Respondent received a section 128 notice dated 28 February 2025 and clearly stating that denial of the Right to Buy was on grounds other than paragraph 11. Despite this, the First Respondent pursued an appeal on the basis of a paragraph 11 denial when they ought to have been advised that the Tribunal had no jurisdiction to hear the appeal.

iii. The First Respondent asked for a face-to-face hearing to determine the preliminary issue of jurisdiction and then advanced arguments that were unsustainable, contrary to the disclosed documents, and ultimately abandoned shortly before the hearing.

First Respondent's case

7. The basis of the First Respondent's case is as follows:

a. The First Respondent's conduct cannot reasonably be characterised as unreasonable. The First Respondent is vulnerable and suffers from significant medical conditions, has significant communication barriers, and has had to rely on family members who did not understand what had gone wrong with the original application and hoped to preserve the 2024 application position.

b. The First Respondent accepts that mistakes occurred and acknowledges that she had a role in some of the procedural difficulties because she relied heavily on family support and was confused by the process. However, in relation to unreasonable conduct:

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i. The issue could have been resolved much earlier had the Applicant communicated more clearly and engaged with the First Respondent at an earlier stage. Instead, the First Respondent was redirected between the Applicant's departments without receiving clear guidance or an explanation of the reasons for the refusal.

ii. The First Respondent acted throughout in good faith and repeatedly tried to engage with the process.

iii. The First Respondent sought legal advice when able.

iv. A costs order would be unjust, disproportionate, and contrary to the overriding objective.

c. The threshold for a finding of "unreasonable conduct" is a high one. It requires conduct going beyond mere difficulty, misunderstanding or procedural error, and involving behaviour that is vexatious, improper or wholly without merit. The First Respondent submits that her conduct does not meet that high threshold.

Second Respondent's case

8. The Second Respondent asserts that, because his client is elderly and speaks little English, he was unable to obtain her informed consent to waive privilege and is therefore unable to respond fully to the Applicant's submissions. He relies on *Daly v Hubner [2001] 12 WLUK 151* at 34, where it was held that, in such circumstances, any doubt should be resolved in favour of the legal representative.

9. The Second Respondent contends that he acted properly throughout his representation of the First Respondent and, in the alternative, that any missteps on his part do not reach the high threshold required to justify the making of a wasted cost order and/or did not cause wasted costs.

10. In regard to his instructions, the Second Respondent was instructed four days before the hearing by Allsop Durn LLP to provide advocacy services. He was not retained to advise on the merits of the appeal and had no direct contact with the First Respondent before the hearing. The Second Respondent disputes the suggestion that he was instructed on a direct access basis and at no time did he have direct contact details for the First Respondent, relying on written instructions, correspondence and Bar Council guidance to support his submission.

11. In dealing with the Applicant's grounds, the Second Respondent submitted:

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a. There was no obligation on the Second Respondent to notify the Applicant that he had been instructed or to file a notice of acting. As counsel, he was not authorised to conduct litigation and could not have come on the record for the First Respondent.

b. It is not normal practice for counsel instructed as an advocate to contact the other side directly and, in any case, the Second Respondent had no reason to believe the instructing solicitors were not communicating with the Applicant.

c. Whilst not ideal, the skeleton argument was indeed served shortly before the hearing. The Second Respondent notes that neither party was under an obligation to prepare a skeleton argument and that he did so to assist the Tribunal. No objection was raised to its admission.

d. The Second Respondent was instructed to represent the First Respondent at the hearing. The First Respondent was entitled to representation and, on the documents considered before the hearing, her application was not bound to fail. However, a "*critical document*", namely Part B of the Notice in Reply to the Tenant's Right to Buy application, was inadvertently overlooked, having been "buried" within a bundle of poorly labelled documents sent to the Second Respondent close to the date of the hearing. The Second Respondent submits that this was partly due to the late filing of the Applicant's case. Once the significance of the document became apparent, he obtained instructions from his client and the appeal was withdrawn.

e. The Second Respondent strongly rejects any suggestion that he falsely claimed to be obtaining instructions during adjournments from Allsop Durn LLP and provided screenshots of phone records.

12. The Second Respondent submits that the matter was not resolved sooner as a result of the Applicant's own failings and that the Applicant should not be awarded costs when its conduct was the primary reason the hearing proceeded unnecessarily. He points to the Applicant's failure to comply with the Tribunal's directions requiring service of evidence by 16 September 2025. Had those directions been complied with, the First Respondent would have had much earlier notice of the Applicant's true position, and the hearing may have been avoided. Further, the Applicant accepts that the critical document was only sent to the First Respondent 10 days before the hearing and not months earlier as it should have been.

13. Turning to the costs sought, the Second Respondent submits that the Applicant has failed to demonstrate that any of the time claimed was wasted as a result of improper, unreasonable or negligent conduct on his part and, further, the burden of proof rests with the Applicant.

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The Law

14. The First-tier Tribunal is in principle a "no costs" jurisdiction. Rule 13 of the Rules gives the Tribunal a discretion to award costs under certain circumstances.

15. By rule 13 of the Tribunal's Rules:

> "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; […]
>
> (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. […]"

16. The leading case is *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC), [2016] L & TR 34 ("Willow Court") which sets out a three-stage approach to an award of costs under rule 13:

> *Stage 1*
>
> At [20], by reference to *Ridehalgh v Horsefield* [1994] Ch 205, the Upper Tribunal considered that "unreasonable" included conduct which was "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." It was stated that "The acid test is whether the conduct permits of a reasonable explanation."
>
> At [28], the Upper Tribunal held that the first stage was whether a person had acted unreasonably. This 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.
>
> *Stage 2*
>
> At the second stage, the Tribunal should 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.
>
> *Stage 3*

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At the third stage, the question for the Tribunal was the terms of the order.

Consideration and Decision

Section 13(1)(a) Wasted Costs

17. The Applicant contends that the Respondent's legal representatives (ie their solicitors) and the Second Respondent acted improperly, unreasonably, or negligently and therefore caused the Applicant to incur unnecessary costs and that the Respondent acted unreasonably in pursuing the appeal when it should have been clear that the Tribunal lacked jurisdiction.

18. The Tribunal does not agree. The Second Respondent was instructed shortly before the hearing to represent the First Respondent, who was entitled to legal representation. The First Respondent does not speak English and was assisted by various family members, including in the hearing. The question of whether or not the Tribunal had jurisdiction was not raised by the First Respondent's solicitors, but neither was it flagged by the Applicants. Without any external guidance, it was not unreasonable for the First Respondent to pursue their case.

19. During the hearing, it became apparent that the Second Respondent had not seen a critical document which proved that the Tribunal lacked jurisdiction. The document had been sent to the Second Respondent from the First Respondent via solicitors, Allsop Durn LPP. The Tribunal accepts that the document had been received as part of a collection of poorly labelled documents, and without any explanatory note. As a result, the Second Respondent failed to identify and open the critical document. As soon as the significance of the document had become apparent, the Second Respondent sought his client's instructions, explained their misunderstanding and confirmed that the appeal would be withdrawn.

20. Whilst not reviewing all the relevant documents was unfortunate, the Tribunal is not satisfied that it amounts to conduct that was improper, unreasonable or negligent.

21. Once the position was clear, the Second Respondent promptly advised his client and obtained instructions, enabling the Tribunal to deal with the matter fairly and justly in accordance with the Tribunal's overriding objective under Rule 3.

22. The Tribunal also rejects the Applicant's remaining criticisms of the Second Respondent's conduct concerning the lack of direct contact with the Applicant, the absence of notice that he had been instructed, the timing of the skeleton argument, the basis upon which he was instructed, and the contention that he ought not to have accepted instructions.

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Whether considered individually or cumulatively, those matters do not amount to conduct that was improper, unreasonable or negligent.

23. The Tribunal therefore does not find that the Second Respondent's conduct satisfies the requirements for a wasted cost order under Rule 13(1)(a). In any event, the Applicant has not established which of the costs claimed were caused by such conduct.

Section 13(1)(b) Unreasonable Conduct

24. In *Willow Court* the Upper Tribunal held that the Tribunal should carry out a three-stage test. The first stage is to consider whether the conduct complained of was unreasonable. This is a high threshold, and if it is not met, there is no need to proceed to the following stages.

25. The Tribunal is not satisfied that the First Respondent acted unreasonably in bringing or conducting proceedings. The Tribunal accepts that the First Respondent received a section 128 notice identifying that the Right to Buy had been refused on grounds other than paragraph 11 and that, as a result, the Tribunal did not have jurisdiction.

26. Having regard to the First Respondent not speaking English and their reliance on family members, which led to a misunderstanding of the process, the Tribunal is satisfied that there was a reasonable explanation for her conduct. The Tribunal is also persuaded that the matter could have been resolved earlier had there been clearer communication from the Applicant concerning the grounds of their refusal and the Tribunal's lack of jurisdiction in this case.

27. The Tribunal therefore finds that the First Respondent did not act unreasonably in bringing or conducting proceedings. As such, the application fails at Stage 1 of the 3-stage test, and the Tribunal does not need to consider Stages 2 and 3.

Name: Mrs E Ratcliff **Date:** 13 October 2026

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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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).

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