



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

**Case reference** : **CAM/42UD/HML/2020/0005**  
**HMCTS Code** : **P: PAPER REMOTE**

**Property** : **Jack's Café, 4 Hadleigh Road,  
Ipswich IP2 OEB**

**Applicant** : **Petra Shelley**

**Respondent** : **Ipswich Borough Council**

**Type of application** : **Costs - rule 13(1)(a) and fees under  
rule 13(2) of the Tribunal  
Procedure (First-tier Tribunal)  
(Property Chamber) Rules 2013**

**Tribunal member(s)** : **Judge Wayte**

**Date of decision** : **5 May 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPER REMOTE. A face-to-face hearing was not held because it was not necessary and all issues could be determined in a remote hearing/on paper. Both parties made representations in accordance with the directions and I have also had regard to the applicant's hearing bundle in the main action. The order made is as follows:

**The tribunal determines that the Respondent should pay the Applicant £1,088 in respect of her wasted costs and fees within 28 days.**

## **Background**

1. The applicant is the freehold owner of the property known as Jack's Café. The property comprises a café on the ground floor with six bed and breakfast rooms and two showers on the first floor, to be used solely and exclusively in association with the café trade under the terms of an occupational business lease dated 10 July 2006 to Mr Hakan Olgun and his wife.
2. An application for an HMO licence in respect of the property was received by the respondent on 30 June 2020. Following an inspection the respondent decided the property was suitable for 5 occupants from 5 separate households and that the other requirements of section 64 (2) and (3) of the Housing Act 2004 were met.
3. Before granting a licence, Schedule 5 paragraph 1 of the 2004 Act requires the authority to serve notice on each relevant person. A relevant person is defined in the Act as including any person who has an estate or interest in the property. Paragraph 1 obliges the authority to consider any representations made in accordance with the notice.
4. The respondent states that a notice was served on 23 October 2020 on Christchurch Solicitors as the executors in the estate of Robert Shelley, listed as the Freeholder. It is assumed that "listed" means "registered".
5. On 26 October 2020 the applicant was informed by her managing agent, Mr Harris, that an email had been received from Mrs Olgun requesting change of use to allow the property to be used as an HMO as an application had been made to the respondent for a licence. The applicant confirmed that she was not willing to agree to that change of use and the tenant was advised of that decision on 26 October 2020.
6. On 3 November 2020 Mr Harris emailed the respondent to confirm that decision and the fact that the lease prohibited use of the property as an HMO.
7. On 12 November 2020 the respondent granted the HMO licence.
8. On 16 November 2020 the applicant appealed the grant of the licence to the tribunal, submitting the £100 application fee by cheque.
9. On 30 November 2020 directions were issued and sent to the parties by email and post. The tribunal also wrote to the licence holder to ask whether he wished to be joined as a party. The directions provided for the parties to meet or at least communicate with each other in the next 3 weeks, for the applicant's case to be sent to the tribunal by 21 December 2020 and the respondent's case by 15 January 2021. The hearing was subsequently arranged for 8 February 2021.
10. On 9 December 2020 the respondent's officer, Paul Rainbow, received a telephone call from Mrs Olgun as she wished to discuss revocation of

the HMO licence. On 11 and 17 December 2020 emails were received from the licence applicant and holder requesting revocation.

11. On 23 December 2020 the applicant paid the hearing fee of £200. The hearing bundles were lodged with the tribunal after the Christmas break.
12. On 11 January 2021 the respondent revoked the HMO licence. The tribunal therefore wrote to the parties to confirm that the hearing had been cancelled.
13. The applicant made an application for the repayment of the tribunal fees and costs in accordance with rule 13 of the 2013 Rules. Directions were given in respect of that application on 22 February 2021 for written representations and the application to be decided without a hearing, in the absence of a request from either party. No such request was received and the matter was therefore considered on the papers.

### **The Law**

14. The applicant claimed wasted costs under section 29(4) of the Tribunal Courts and Enforcement Act 2007, on the basis that Mr Rainbow of the council had been negligent in granting the licence. The definition of wasted costs in section 29(5) states that it means any costs incurred by a party:
  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
15. The leading decision on wasted costs in the courts is *Ridehalgh v Horsefield* [1994] Ch 2005, CA. The Court of Appeal provided guidelines as to the meaning of improper, unreasonable and negligent conduct. In this case the applicant relied on negligent conduct. *Ridehalgh* stated that “negligent” should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession. Under the 2013 rules, representatives before the tribunal do not need to be lawyers and therefore this guidance should be considered in the light of a reasonably competent council officer.
16. The leading case on unreasonable costs, a parallel process under rule 13 is *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. In paragraph 43 the Upper Tribunal made it clear that such applications should be determined summarily and the decision need not be lengthy, with the underlying dispute taken as read. There are three steps: I must first decide if the respondent has been improper,

unreasonable or negligent in the *Ridehalgh* sense; if so, whether an award of costs should be made and, finally, what amount.

17. In respect of the application for the reimbursement of fees, the tribunal has an absolute discretion under rule 13(2) of the 2013 Rules.

### **The applicant's case**

18. The applicant stated that the council was negligent in ignoring or disregarding her managing agents email dated 3 November 2020 which made it clear that granting an HMO licence on the property was not permitted under the terms of the lease to Mr and Mrs Olgan.
19. The applicant also stated that use as an HMO would contravene the permitted use under planning.
20. As a consequence, she stated that the tribunal fees of £300 and professional fees of £2,200 including VAT incurred by her had been wasted. Her total claim was therefore £2,520.

### **The respondent's case**

21. The respondent stated that although the applicant's representations were considered, the council was of the opinion that the question of whether or not the terms of a lease allowed the use of the property as an HMO was a matter between the landlord and tenant rather than a relevant consideration of granting the licence. As the requirements of sections 64(3) and (4) of the 2004 Act were met, the council decided to issue the licence.
22. The respondent claimed that the council received details of the appeal on 15 December 2020, making no mention of the email sent to Paul Rainbow by the tribunal on 30 November 2020.
23. The decision to revoke was made as a result of the written request of the licence holder only and was not influenced by the decision of the applicant to appeal the issue of the licence.
24. No costs had been incurred as a result of any improper, unreasonable or negligent acts or omission on the part of the council. The council had acted entirely properly, in accordance with the statutory provisions relating to the grant of an HMO licence and is not concerned in any dispute or disagreement in relation to the provisions of the lease between Mr and Mrs Olgun and the applicant.
25. In the circumstances there should be no order as to costs in this matter.

### **Tribunal decision and reasons**

26. As outlined above, the grant or refusal of a licence is dealt with in section 64 of the Housing Act 2004. Unfortunately, that section is silent about third party issues which may affect the practicality of

licensing the property as an HMO, with section 64 focussing on the suitability of the property in terms of the number of persons and the suitability of the applicant as a licence holder and/or the manager. As mentioned in the directions, planning issues have been held to be relevant by the Upper Tribunal in the case of *London Borough of Waltham Forest v Khan* [2017] UKUT 153 (LC). Although the applicant now states that use of the property as an HMO would have breached planning permission, no evidence has been provided in support of that statement and that was not of course part of the original grounds of appeal.

27. Since the licence was revoked prior to the submission of the council's case, I do not have the benefit of any evidence they may have adduced in support of their decision to grant the licence, other than the statement outlined above. Assuming that no better evidence would have been provided to support that decision, my personal inclination would have been to revoke the licence, applying the *Waltham Forest* case by analogy. I would also query the logic of granting it in the first place, given the clear terms of the lease. That said, I do not consider that the decision to grant the licence was so obviously wrong as to support a finding of negligence in the *Ridehalgh* sense.
28. However, I am satisfied that the council knew or should have known about the appeal on 30 November 2020, when the application was emailed to their representative. The council admit to receiving details of the appeal by 15 December 2020. The directions required the parties to communicate to see whether the dispute could be settled and of course by 9 or 11 December 2020 at the latest, the council were aware that the tenant wished to revoke the licence. Despite that knowledge, it would appear that no attempt was made to contact the applicant's representative until 11 January 2021, shortly before the deadline for the council's evidence, when the council served their Notice of Revocation. I consider that this failure, in breach of the directions, is unreasonable conduct on the part of the council's representative and that it clearly led to wasted costs on the part of the applicant, including the payment of the hearing fee and preparation of her hearing bundle. In the circumstances, I consider that the respondent should pay those costs.
29. The applicant's costs were not broken down in terms of each stage of the proceedings and it would seem that the majority of the costs were incurred at the outset. In the absence of any challenge by the respondent to the hourly fee sought by Mr Harris, I therefore order that the council pay the applicant 4 hours at £185 per hour plus VAT, to include any costs incurred as a result of this application, together with £200 in respect of the hearing fee, making a total of £1,088.

**Judge Ruth Wayte**

**5 May 2021**

## **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).