



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

Case reference : **CAM/00MD/HNA/2020/0002**
HMCTS Code : **P:PAPERREMOTE**

Property : **15 Stoke Poges Lane, Slough SL1
3NX**

Applicant : **Mr Ashoni Kumar**

Respondent : **Slough Borough Council**

Type of application : **Costs - rule 13(1)(b) of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

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

Date of decision : **22 June 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has been consented to by the parties. I was also satisfied that all issues could be determined on paper. The documents that I was referred to are described below, as is the order made.

The tribunal's decision:

- 1. The application is struck out for want of jurisdiction as the final notice has been withdrawn;**
- 2. The tribunal determines that the Respondent should pay the Applicant £290 in respect of his costs of the proceedings within 28 days of the date of this decision.**

Background

1. This was the second appeal against a number of financial penalties levied against Mr Kumar on the basis that his property was an unlicensed HMO. The first appeal was withdrawn after the council withdrew their final notice on 15 January 2020 and served a new one. Unfortunately, the later notice was also withdrawn by the council on 7 May 2020, removing the jurisdiction of the tribunal in relation to this appeal. In the circumstances I must strike out the application under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
2. The council had agreed to refund the application fee but Mr Kumar requested an order for costs, which are to be based on his personal costs as a litigant in person as he was unable to produce evidence of any third-party expenditure.
3. The tribunal wrote to the parties on 15 May 2020 inviting Mr Kumar to make any application for costs by 29 May 2020 and allowing the council an opportunity to make representations by 5 June 2020. Mr Kumar's email was sent to the tribunal on 29 May 2020 but not copied to the respondent until 1 June 2020 who provided their representations on time.
4. Mr Kumar's claim for costs is under Rule 13(1)(b) of the 2013 Rules, on the basis that the respondent had acted unreasonably in defending or conducting the proceedings.
5. The leading decision on Rule 13 costs 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 applicant acted unreasonably. If so, whether an award of costs should be made and, finally, what amount.
6. In deciding whether a party's behaviour is unreasonable the Upper Tribunal in *Willow Court* cites with approval the judgment of Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 2005. It does so at paragraph 24 of its decision in these terms:

““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. 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?”

7. The unreasonable conduct alleged in this case is the withdrawal of the final notice for a second time, shortly before the extended deadline for submission of the respondent's case, rendering the second appeal academic. The respondent has subsequently confirmed it will not seek to serve a third final notice, although it maintains it was reasonable to bring the action. They state the final notice was withdrawn as it did not contain the prescribed information rather than to do with the merit of the claim. They also state that as the costs were not served on them until 1 June 2020 the application for costs should be dismissed.
8. The tribunal considers that the respondent's failure to serve a correct final notice, for the second time, was unreasonable in the *Willow Court* sense. Having withdrawn the first notice, the respondent should clearly have ensured that their second notice was correct, before putting Mr Kumar to the cost of a second appeal. It is also unreasonable that it took until 7 May 2020 for the respondent to realise their error, having sought repeated extensions of time for their evidence. In the circumstances it is appropriate to make an order for costs in favour of Mr Kumar. The fact that his costs schedule was served on the respondent a few days late is a minor omission and makes no difference to the tribunal's decision.
9. That said, the applicant's costs estimate of 84 hours is rather ambitious. The respondent also complained about the lack of detail but the tribunal considers it is sufficient for summary assessment. That said, only the costs incurred in respect of the proceedings are relevant and would appear to amount to 58 hours, assuming the schedule is in chronological order. Again, this seems a little long bearing in mind the council had not served their evidence before they withdrew the notice. In the circumstances and taking the council's representations as to the time taken into account, I consider that a reasonable amount is 10 hours at the litigant in person rate of £19 per hour or £190. In addition, I order the council to repay the application fee of £100, making a total order of £290.

Judge Ruth Wayte

22 June 2020

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).