



Neutral Citation Number: [2026] EWCA Civ 972

Case No: CA-2025-001298

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
Martin Rodger KC, Deputy Chamber President
[2025] UKUT 97 (LC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 July 2026

Before :

LORD JUSTICE PHILLIPS
LADY JUSTICE ANDREWS
and
LORD JUSTICE NUGEE

Between :

MANAQUEL COMPANY LTD

Applicant/
Appellant

- and -

LONDON BOROUGH OF LAMBETH

Respondent

Richard Miller (instructed by **Comptons Solicitors LLP**) for the **Appellant**
Nick Ham (instructed by **Lambeth Council Legal Services**) for the **Respondent**

Hearing date: 6 May 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Nugee:

Introduction

1. This appeal from the Upper Tribunal (Lands Chamber) (“**the UT**”) concerns the question whether the Appellant, Manaqel Company Ltd (“**Manaqel**”), should have been awarded its costs in tribunal proceedings arising out of the service of an improvement notice under the Housing Act 2004 (“**the Act**”). It comes before this Court because it raises an issue of more general importance which can be summarised as follows: when an appeal is brought to the First-tier Tribunal (“**FTT**”) against an improvement notice, should the FTT consider the appeal by reference to how matters were at the date of service of the improvement notice? Or should it do so by reference to how matters are at the date of hearing the appeal? I will call this “**the date issue**”.
2. Manaqel is the freehold owner of an estate comprising 96 flats. The Respondent, the London Borough of Lambeth (“**Lambeth**”), is the local housing authority. Lambeth served an improvement notice on Manaqel. Manaqel appealed to the FTT. At the hearing of the appeal both parties proceeded on the basis that the FTT should assess the validity of the notice as at the date of the hearing. The FTT quashed the improvement notice in its entirety. Manaqel then applied for costs. The FTT refused the application.
3. Manaqel appealed the costs decision to the UT. The appeal was heard by Martin Rodger KC, the Deputy Chamber President. He dismissed Manaqel’s appeal. But in reaching his decision he held that the FTT had been wrong to consider the validity of the notice by reference to matters as at the date of the hearing: the question for the FTT should have been whether Lambeth was wrong to serve the notice it did, when it did, and subsequent matters could not affect that. He proceeded to hold that the FTT’s decision had been legally flawed, but in the exercise of his discretion decided not to remit the question of costs to the FTT and dismissed the appeal.
4. Manaqel appeals to this Court with permission granted by myself. We heard submissions from Mr Richard Miller on behalf of Manaqel on two issues. The first was the date issue. The second (which I will call “**the costs issue**”) was whether the Deputy President’s decision on costs was flawed. After hearing from Mr Miller, we were able to tell the parties that we did not need to hear from Mr Nick Ham, who appeared for Lambeth, on the date issue and that the appeal on that ground would be dismissed; and we then heard further argument on the costs issue.
5. I now give my reasons for agreeing to our decision on the date issue, and my decision on the costs issue. Here too, for the reasons that follow, I would dismiss the appeal.

The Housing Act 2004

6. The long title to the Housing Act 2004 is as follows:

“An Act to make provision about housing conditions; to regulate houses in multiple occupation and certain other residential accommodation; to make provision for home information packs in connection with the sale of residential properties; to make provision about secure tenants and the right to buy; to make provision about mobile homes and the

accommodation needs of gypsies and travellers; to make other provision about housing; and for connected purposes.”

This gives a good indication of the wide range of different matters relating to housing which are addressed by the Act. We are directly concerned in this appeal with the first of these, housing conditions. But it is helpful to look also at some of the other provisions in the remainder of the Act.

7. Housing conditions are the subject of Part 1 of the Act (s. 1 to s. 54). Chapter 1 of Part 1 (s. 1 to s. 10) is headed “Enforcement of housing standards: general” and contains an introduction to the provisions of Part 1. This starts in s. 1 with an explanation that Part 1 provides for a new system of assessing the condition of residential premises (s. 1(1)(a)); that this new system operates by reference to the existence of “category 1” or “category 2” hazards on residential premises, replacing the existing system based on the test of fitness for human habitation contained in s. 604 of the Housing Act 1985 (s. 1(2)(a) and (b)); and that Part 1 provides for various types of enforcement action, namely the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices), the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations) (s. 1(3)(a)-(c)).
8. Category 1 and category 2 hazards are explained in s. 2: a hazard means any risk of harm to the health or safety of an actual or potential occupier of a dwelling (or of an HMO – that is, a house in multiple occupation) that arises from the deficiency of the dwelling (or HMO) or any building or land in the vicinity; such hazards are divided into category 1 hazards (more serious) and category 2 (less serious); and the category which any particular hazard falls into is determined by the assignment to the hazard of a numerical score under regulations, namely the Housing Health and Safety Rating System (England) Regulations 2005, SI 2005 No 3208. These are very detailed and highly prescriptive but it is not necessary to refer to their provisions.
9. Under s. 3 and s. 4 it is the duty of a local housing authority to keep housing conditions in its area under review, and in certain circumstances to arrange for an inspection of particular residential premises to be carried out with a view to determining if a category 1 or 2 hazard exists on those premises. Under s. 5 it is the duty of the local housing authority, if it considers that a category 1 hazard exists on any residential premises, to take the appropriate enforcement action (s. 5(1)). What that is depends on which of a number of potential actions is available to the authority, and if more than one is available, which of them it considers to be the most appropriate (s. 5(2)-(4)). Those potential actions include in appropriate cases the service of an improvement notice under s. 11 (s. 5(2)(a)).
10. A new s. 6A was recently added to the Act by the Renters’ Rights Act 2025. It enables a local housing authority in certain circumstances to impose a financial penalty on the “responsible person”. This is of interest in the context of the present appeal only because if one reads through the Act as it now stands it is the first section that the reader comes to which contains provision for an appeal: see s. 6A(9)(b) which cross-refers to sch A1 as making provision for, among other things, appeals against financial penalties under s. 6A. Sch A1 para 10 duly provides for a person on whom a financial penalty is imposed to have a right of appeal to the FTT against the decision to impose the penalty

or the amount of it (sch A1 para 10(1)). Paras 10(4) and (5) provide:

“(4) An appeal under this paragraph—

- (a) is to be a re-hearing of the authority’s decision, but
- (b) may be determined having regard to matters of which the authority was unaware.

(5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.”

11. Reverting to Chapter 1 of Part 1, s. 7 provides that where a local housing authority considers that a category 2 hazard exists in relation to residential premises, they have power under various other sections to take particular kinds of enforcement action, one of which is the service of an improvement notice under s. 12 (s. 7(1), (2)(a)).
12. As foreshadowed by s. 1(3)(a), Chapter 2 of Part 1 (s. 11 to s. 39) provides for three types of enforcement action by local housing authorities, namely improvement notices, prohibition orders and hazard awareness notices. The present appeal is concerned with an improvement notice served under ss. 11 and 12 of the Act. These two sections apply to category 1 and category 2 hazards respectively and provide as follows:

“11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1) If—

- (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
- (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

- (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;
- (b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat

or flats (or any part of the building) or any external common parts;

- (c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

- (4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—
 - (a) that the deficiency from which the hazard arises is situated there, and
 - (b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.
- (5) The remedial action required to be taken by the notice—
 - (a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but
 - (b) may extend beyond such action.
- (6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.
- (7) The operation of an improvement notice under this section may be suspended in accordance with section 14.
- (8) In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

12 Improvement notices relating to category 2 hazards: power of authority to serve notice

- (1) If—
 - (a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and
 - (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may serve an

improvement notice under this section in respect of the hazard.

- (2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.
 - (3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.
 - (4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.
 - (5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.
 - (6) The operation of an improvement notice under this section may be suspended in accordance with section 14.”
13. Provision for appeal against an improvement notice is made by s. 18 which provides that sch 1, which deals, among other things, with such appeals, has effect. Sch 1 para 10 duly provides that a person on whom an improvement notice is served may appeal against the notice to the appropriate tribunal, which in England is the FTT (see s. 261(8)(a)). Sch 1 para 15 applies to an appeal under para 10, and paras 15(2) and (3) provide:
- “(2) The appeal—
 - (a) is to be by way of a re-hearing, but
 - (b) may be determined having regard to matters of which the authority were unaware.
 - (3) The tribunal may by order quash, confirm or vary the improvement notice.”

These are the actual provisions which fall to be construed for the purposes of the date issue in the present case.

14. Numerous other provisions of the Act contain similar rights of appeal. Thus, continuing with Chapter 2 of Part 1, s. 16 confers power on the local housing authority to revoke or vary an improvement notice, and sch 1 para 13 confers a right of appeal against a decision of the local housing authority to vary, or to refuse to revoke or vary, an improvement notice. Sch 1 para 18 applies to such an appeal and paras 18(2) and (3) provide:
- “(2) Paragraph 15(2) applies to such an appeal as it applies to an appeal under paragraph 10.

- (3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.”

Similarly s. 27 and sch 2 paras 7 and 9 confer a right of appeal against the making, variation, and refusal to revoke or vary, prohibition orders; and in Chapter 3 of Part 1, s. 45(1) and (2) confer rights of appeal against the decision of the local housing authority to take emergency remedial action, and the making of an emergency prohibition order, respectively. In all these cases the same formula is used, namely that the appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority were unaware: see sch 2 paras 11(2) and 13(2), and s. 45(5).

15. Parts 2 (s. 55 to s. 78) and 3 (s. 79 to s. 100) of the Act are each concerned with licensing by local housing authorities, Part 2 with the licensing of HMOs which require to be licensed, and Part 3 with the licensing of certain other houses in selective licensing areas. Again rights of appeal are conferred, by s. 71 (in the case of Part 2 licensing decisions) and s. 94 (in the case of Part 3 licensing decisions) and (in each case) sch 5. Sch 5 para 31 confers a right of appeal against the refusal, or grant, of a licence; and sch 5 para 32 confers a right of appeal against a decision to vary or revoke, or to refuse to vary or revoke, a licence. Sch 5 para 34 applies to an appeal under either para 31 or para 32, and paras 34(2) and (3) provide:

“(2) An appeal—

- (a) is to be by way of a re-hearing, but
- (b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may confirm, reverse or vary the decision of the local housing authority.”

16. Part 4 (s. 101 to s. 147) of the Act is headed “Additional control provisions in relation to residential accommodation” and confers a variety of other powers on local housing authorities. It too provides for a range of appeals, namely in relation to interim and final management orders (s. 123 and sch 6 paras 24 and 28); in relation to empty dwelling management orders (s. 132(6) and sch 7 paras 26, 30 and 34); and in relation to overcrowding notices (s. 143). In all such cases the same formula is used for the powers of the tribunal, namely that the appeal (a) is to be by way of re-hearing but (b) may be determined having regard to matters of which the authority were unaware: see sch 6 paras 26(2) and 30(2); sch 7 paras 28(2), 32(2) and 36(2); and s. 143(2) respectively).

Hussain v Waltham Forest

17. In *Hussain (Nasim) v Waltham Forest London Borough Council* [2023] EWCA (Civ) 733, [2024] KB 154 (“**Hussain**”), this Court considered the nature of an appeal to the FTT under sch 5 of the Act, that is in relation to licensing under Parts 2 and 3 of the Act. The local housing authority, Waltham Forest, had (i) revoked a residential property licence previously granted under Part 3 of the Act to Ms Farina Hussain (“**Farina**”) in respect of a flat and (ii) refused applications for licences made by FHCO

Ltd (Farina's company, "**FHCO**") in respect of a further 6 residential properties, having decided that Farina, and hence her company FHCO, was not a fit and proper person. Farina and FHCO appealed to the FTT under sch 5 paras 31 and 32 of the Act. The FTT allowed their appeals, and a further appeal to the UT was dismissed. On appeal to this Court by Waltham Forest the Court allowed the appeal for reasons given by Andrews LJ (Lewison LJ agreeing and adding a short concurring judgment, and Snowden LJ agreeing with both judgments).

18. Andrews LJ summarised Ground 1 of the appeal as follows:

"2 The key issue is whether, as the [UT] held, when hearing such an appeal the FTT makes its own assessment as to whether, on the date of the appeal, someone is a fit and proper person to hold a licence; or whether, as the appellant ("the Council") contends, the task of the FTT is to determine whether the decision of the local housing authority to grant, refuse or revoke a licence was wrong, and therefore to consider whether the individual concerned was a fit and proper person on the date on which that decision was made.

3 A subsidiary, related issue is whether the FTT is entitled to have regard to information which came into existence after the decision under appeal was taken, or whether the FTT must only consider information that was available at the time of that decision (though this may include information which was not then known to the local housing authority)."

19. As Andrews LJ said at [49], resolution of those issues turned on the correct interpretation of sch 5 para 34 of the Act, and in particular of para 34(2) (which I have set out at paragraph 15 above). She gave her answer as follows:

"62 I begin consideration of Ground 1 by referring to the language of paragraph 34 itself. Sub-paragraph (2) states that the appeal is to be by way of a re-hearing, but may be determined having regard to matters of which the authority were unaware. The word "but" which introduces the proviso in (b) is important. In this context it enables something to be done which would not otherwise be permitted. Without the proviso, the FTT would not be entitled to consider matters that were unknown to the primary decision-maker. Thus Parliament cannot have intended there to be a re-hearing in the fullest sense.

63 In my judgment the proviso assists in resolving the issue as to the time at which the question of fitness and propriety must be considered. Were it not there, the FTT would be constrained to consider only those matters that were known to the housing authority, and therefore by necessary implication, known and in existence at the time when the decision was made. That points inexorably to the conclusion that the task of the FTT is to determine whether the decision under appeal was wrong at the time when it was taken.

...

73 For those reasons, I have concluded that the UT was wrong to find that it was open to the FTT to decide the appeal by addressing fitness and propriety as at the date of the appeal.”

20. Lewison LJ agreed. He put it like this:

“103 As Mr Underwood KC [counsel for Waltham Forest] submitted, if the FTT (or, for that matter, the UT or this court) could decide an appeal by reference to the situation as it stood on the date of the appeal, all the discretionary and evaluative powers conferred on the local housing authority could simply be by-passed. It is true that on an appeal the appellate tribunal may consider matters of which the authority was unaware. But those matters must, in my judgment, be restricted to matters which tend to show that the local housing authority’s decision was right or wrong at the time when it was made. Thus the appellate tribunal is not confined to deciding whether on the evidence before it, the local housing authority was entitled to reach the decision that it did. The appellate tribunal may decide that matters of which the authority was unaware show that the authority’s decision was wrong. In that sense, the appellate tribunal is entitled to set aside a decision with which it disagrees.

104 I conclude, therefore, that on an appeal against an authority’s refusal to grant a licence, the question before the appellate tribunal is whether the authority’s decision was wrong. It follows that the FTT was wrong to decide the different question: namely, whether on the facts as they stood at the date of their own decision, Farina or FHCO was a fit and proper person.”

21. The question raised by Ground 1 of the present appeal (the date issue) is effectively whether the same applies to an appeal against an improvement notice under sch 1 para 10 of the Act.

Facts

22. With that introduction, I can now refer to the facts of the present case.

23. Manaque is the registered freehold owner of Dorchester Court in Herne Hill, an Art Deco estate consisting of 8 blocks containing 96 flats (“**the Estate**”). Following inspections between March and June 2021, Lambeth served an improvement notice on Manaque on 20 October 2021 under ss. 11 and 12 of the Act. Schedule 1 to the notice listed the category 1 and category 2 hazards which Lambeth had identified on the Estate, and schedule 2 specified the works required to remedy them.

24. The hazards identified in schedule 1 can be summarised as follows:

- (1) Excess cold (category 1) arising from defective windows to flats.
- (2) Excess cold (category 1) and excess heat (category 2) arising from deficiencies in the heating and hot water system.

- (3) Hot surfaces and materials (category 1) due to the temperature (69.5°C) of the hot water within flats, presenting a risk of scalding from excessively hot water and excessively hot radiator surfaces.
25. It is not necessary to set out all the detail of the description of the hazards in schedule 1, or the remedial works required in schedule 2, but it may be helpful to give an example. The first hazard identified was excess cold arising from defective windows. The description of the hazard in schedule 1 was as follows:

“Excess Cold – Category: 1 Band: A

Location: Flats within Dorchester Court

The deficiencies giving rise to the hazard including a description of the hazard:

WINDOWS

1. The windows to most flats are single glazed and the frames are corroded resulting in rust bloom forcing components of windows apart, and many have broken or missing stays and handles. Many windows have cracked and/or broken glazing. This wastes heat and reduces air temperatures. It also causes draughts and discomfort and can contribute to health effects such as respiratory and cardiovascular conditions and other cold related illnesses.”

26. The remedial works for this hazard specified in schedule 2 included the following:

“Location: Flats within Dorchester Court

WINDOWS

1. Install replica galvanised steel Crittall Windows, that are similar in section size to the existing window units and as close to exact replicas of the existing as possible. The windows should be double glazed, and constructed of clear toughened glass. These windows should be coloured to match recently replaced large windows with the glass units bedded in silicone sealant to mimic traditional putty in appearance.
2. New window hinges and fasteners to be mounted to match existing.
3. Replace timber sub-frames and hardwood cills to all windows and doors with polyester powder coated aluminium sub-frames and ensure the cills match the windows.
4. Ensure the window and door replacement is approved in advance, including any ordering or installing of any components, by the conservation team in the planning department, and that they comply with Part L1B of Schedule 1 of the Building Regulations.

5. Apply for the necessary consents from the local planning authority prior to commencing these works.
 6. Produce a programme of work to clearly outline the sequence of activities including the date you undertake to apply for listed building consent, the intended commencement date, the order in which your contractor plans to carry out the work, and the planned completion date regarding the window replacement. A copy to be provided to the Local Authority before any works commence.”
27. Schedule 2 contained a time frame for completion of these works: the programme of work (item 6) was required within 1 month of the “operative date” of 24 November 2021; the approvals and consents (items 4 and 5) were required to be started within 2 months, and completed within 5 months, of the operative date; and the works themselves (items 1 to 3) started within 6 months, and completed within 15 months, of the operative date.
28. Works were also required in the plant room, substations, network and flats to address the defects in the hot water and heating system, and to reduce the temperature of the hot water at each point of use to 49°C or less. The timescale for these was that they should be started within 1 month, and completed within 4 months of the operative date.

Appeal to the FTT

29. Manaqel appealed against the improvement notice to the FTT under sch 1 para 10 of the Act. The appeal was heard by the FTT (Judge P Korn and Mr A Fonka, sitting in the Property Chamber) on 2 and 3 October 2023, that is, as the Deputy President pointed out in his UT decision, nearly 2 years after the improvement notice was served. One of the points taken by Manaqel in its appeal was that works had been undertaken since the service of the notice, and counsel for Manaqel (Mr Nicholas Isaac KC) put to Ms Charlotte Ward (the individual at Lambeth responsible for the notice, who gave evidence before the FTT) that the relevant assessment date for the hazards for the purposes of the appeal was the day of the hearing and yet there had been no inspection since 2021. Ms Ward accepted that there had been no reassessment for the purposes of the hearing. In his closing submissions Mr Isaac made the point, among others, that there had been no reassessment on any of the hazards even though it was accepted by Lambeth that Manaqel had made relevant impactful changes.
30. Counsel for Lambeth (Mr Ham) did not take issue with the suggestion that the date for assessment of the hazards was the day of the hearing, and in his own closing submissions accepted that the improvement notice should not merely be confirmed as there were reasonable grounds for varying it; Lambeth considered the windows to be the principal issue but accepted that there had been no updated assessment. But he submitted that it was clear that there were still some deficiencies which should be addressed pursuant to a varied improvement notice, and suggested that the hearing might be adjourned to enable an up-to-date schedule of work to be prepared.
31. The FTT gave their decision on 17 November 2023. At [67] they said that it was clear – and readily conceded by Manaqel – that there was significant disrepair at the Estate; and that it was also clear both from the evidence and their own inspection that certain

items of disrepair such as cracked windows will have had, and continued to have, an adverse impact on the relevant occupiers' use and enjoyment of their flat. They continued:

“69. However, in this case we have major concerns about the contents of the Improvement Notice itself. It is clear that the Applicant has carried out certain works which the Respondent concedes have remedied some deficiencies and reduced the extent of certain other deficiencies, and the Respondent has not reinspected or carried out a recent reassessment of the hazards. The Respondent is therefore in difficulty when it comes to evidencing the current position and the extent to which remedial action still needs to be taken. The Respondent has now conceded that the Excess Heat hazard would appear to have been adequately dealt with, but it is not able to demonstrate the current position with the Excess Cold hazard (this being its main current focus) or the Hot Surfaces and Materials hazard.”

32. The FTT also considered that the improvement notice was not specific enough. For example Lambeth accepted that the works required to the windows (as specified in paragraph 1 of schedule 2 to the notice) did not apply to all the flats, but the notice did not tell Manauel which flats it did apply to. The FTT also had criticisms of the scoring of various risks by Lambeth, and added (at [77]) that some of Lambeth's concerns regarding potential under-supply of heating had now been addressed by Manauel. They concluded:

“79. It is unsatisfactory that there is significant disrepair within the Estate which has not been attended to over a long period of time, and flat occupiers will have suffered as a result. However, we cannot confirm an improvement notice which for a number of reasons is patently flawed, and we do not have sufficient information or evidence before us for it to be possible to vary it so as to turn it into an improvement notice which fairly and specifically sets out the hazards that exist and the works that need to be carried out in order to alleviate those hazards.

80. In conclusion, the Improvement Notice is much too vague and the evidence before us does not support the Respondent's conclusions as to the extent of any hazards and the works that need to be carried out. Accordingly, the Improvement Notice is hereby quashed in its entirety.”

33. Manauel then applied for its costs pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, SI 2013 No 1169 (“**the Rules**”), supporting its application with a schedule showing that it had incurred costs of more than £145,000 pursuing its appeal.
34. Rule 13(1) of the Rules provides as follows:

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

- (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;
 - (c) in a land registration case, or
 - (d) in proceedings under Schedule 3A to the Communications Act 2003 (the Electronic Communications Code) 5 including proceedings that have been transferred from the Upper Tribunal.”

(Rule 13(1ZA) provides that the FTT may not make an order under Rule 13(1)(b) in proceedings under a number of statutory provisions, but these do not include appeals under the Act).

35. The FTT determined Manauel’s application without a hearing on written submissions, and handed down their decision on 16 May 2024. They referred to the decision of the UT in *Willow Court Management Ltd v Mrs Ratna Alexander* [2016] UKUT 290 (LC) (“*Willow Court*”) as the leading case on how an application under Rule 13(1)(b) should be approached. The UT in *Willow Court* prescribed a three-stage approach, namely (a) applying an objective standard, has the person acted unreasonably? (b) if so, should an order for costs be made? and (c) if so, what should the terms of the order be?
36. They then considered the first stage. Although in some respects critical of Lambeth, they concluded that to treat Lambeth’s conduct as unreasonable conduct for the purposes of Rule 13(1)(b) would ultimately in their view be too harsh. They therefore held that the application failed to pass the first stage of the test set out in *Willow Court* and refused Manauel’s application.

Appeal to the UT

37. Manauel appealed to the UT, with the permission of the FTT, against the refusal of its application for costs. The appeal was heard by the Deputy President on 27 February 2025 and he handed down his decision at [2025] UKUT 97 (LC) on 25 March 2025.
38. Having referred to the facts, the decisions of the FTT both on the substantive issue and on costs, and having noted that *Willow Court* had recently been approved by this Court in *Lea v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241, [2025] 1 WLR 371, the Deputy President referred to this Court’s decision in *Hussain* and continued:

“35. The current appeal is not against the FTT’s substantive decision to quash the improvement notice, nor did Lambeth question the FTT’s approach to Manauel’s appeal against the notice in a cross-appeal of its own. The issue is whether the FTT erred in refusing to make a costs order against Lambeth. But it is impossible to determine whether the FTT was impermissibly lenient in its reaction to Lambeth’s conduct without first considering whether the criticisms

it made were based on a mistaken appreciation of the real issues in the appeal. Before deciding, for example, whether it was unreasonable for a party to fail to prepare evidence it is relevant to consider whether that evidence would have been relevant to an issue which properly arose for determination. It was for that reason that I asked the parties to consider the relevance of the Court of Appeal's decision in *Waltham Forest v Hussain*."

39. He then considered whether sch 1 para 15(2) of the Act required the FTT to adopt the same approach to the date issue as in *Hussain*. He had himself already expressed the view in *Curd v Liverpool City Council* [2024] UKUT 218 (LC), albeit without hearing argument to the contrary, that the same approach as in *Hussain* did apply to appeals against improvement notices. In the present case he considered the arguments put forward by Mr Miller on behalf of Manaquel but was not persuaded by them, concluding:

"48. For these reasons I am satisfied that significant parts of Manaquel's case were presented to the FTT on a legally incorrect basis. The question for the FTT should have been whether Lambeth was wrong to serve the notice it did, when it did; works done since the service of the notice could not undermine the validity of Lambeth's decision, nor was there any requirement for Lambeth's officers to justify or reformulate the notice in the light of those works."

40. He then considered the appeal against that background. Mr Isaac had explained that the unreasonable behaviour which Manaquel alleged was Lambeth's decision to defend the appeal against the "patently flawed" improvement notice. That led the Deputy President into a characteristically careful and cogent analysis of the criticisms of Lambeth which the FTT had upheld. It is not necessary to detail it all, but among other things he found that much of the FTT's analysis was flawed because of their wrong approach to the date issue. For example, it was wrong of the FTT to say, as they did in their decision at [69] (quoted in paragraph 31 above), that because Lambeth had not reinspected or carried out a recent reassessment of the hazards it was "therefore in difficulty when it comes to evidencing the current position and the extent to which remedial action still needs to be taken": there was, he said, no onus on it to do either.

41. He summarised the position as follows:

"62. The FTT described Lambeth's conduct of the proceedings as "incompetent"... That description was its summary of the whole body of criticism it had directed against Lambeth in both decisions. For the reasons I have explained, many of those criticisms were unjustified. The lack of precision in the improvement notice and the failure to keep records of the inspection were legitimate complaints so far as the windows were concerned, but they did not undermine the notice so far as it related to the other hazards or the actions required to address them and did not justify quashing the notice in its entirety. Lambeth's inability to produce the hazard score calculation for the hot surfaces and materials hazards justified the complaint that its record keeping was incompetent, but it did not

cast doubt on the proposition that the supply of scalding water represented a hazard which required to be remediated. Lambeth's failure to arrange for a recent inspection and the absence of evidence enabling the FTT to vary the notice were not legitimate complaints and did not reflect badly on the notice. It was not fanciful to suggest that Manaque might propose variations to the notice, since that is what the statutory scheme envisages. Finally, Lambeth's suggestion, through Mr Ham, that the hearing be adjourned to enable additional evidence to be prepared showing the current condition of the building was a reflection of the shared misconception about the proper subject matter of the appeal. Manaque's case was founded on that misconception and while it ought not to have been acquiesced in by Lambeth, it did not justify singling the authority out for criticism."

42. He then went on to consider whether the FTT had in any event asked themselves the right question when considering whether Lambeth's conduct was unreasonable. He concluded that they had not, as explained by him as follows:

"68 I therefore agree with Mr Isaac that the FTT's decision was flawed. It was flawed not only because the FTT was persuaded by Mr Isaac himself of the importance of matters which, on a proper analysis, were irrelevant, but also because it failed to answer its own question whether the conduct about which there were legitimate grounds of complaint was open to some reasonable explanation. The first flaw pervades the decision and undermines many of the criticisms on which the application for costs was originally based, but it does not cast doubt on the FTT's conclusion that Lambeth's conduct was not unreasonable. But the second flaw vitiates that conclusion because the FTT did not consider, in relation to each of the faults it found with Lambeth's conduct, whether there was a reasonable explanation. It simply asserted, without proper explanation, that its conduct of the proceedings was not unreasonable."

43. That led him to consider what the consequences were. He referred to s. 12 of the Tribunals, Courts and Enforcement Act 2007 ("**TCEA 2007**") which provides, so far as relevant, as follows:

"12 Proceedings on appeal to Upper Tribunal

- (1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under section 11, finds that the making of the decision concerned involved the making of an error on a point of law.
- (2) The Upper Tribunal—
 - (a) may (but need not) set aside the decision of the First-tier Tribunal, and
 - (b) if it does, must either—

- (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
 - (ii) re-make the decision.
- (3) ...
- (4) In acting under subsection (2)(b)(ii), the Upper Tribunal—
 - (a) may make any decision which the First-tier Tribunal could make if the First-tier Tribunal were re-making the decision, and
 - (b) may make such findings of fact as it considers appropriate.”
- 44. He then said that neither party was enthusiastic about the application for costs being remitted to the FTT. The normal course where the UT finds that a decision of the FTT involved an error of law was for the UT to set aside and re-make the decision. But he was very poorly placed to evaluate Lambeth’s conduct as would be required if he were to remake the decision. There was no transcript; he did not have the evidence that was before the FTT; and he knew very little about how the proceedings were conducted. He concluded that it would therefore not be appropriate for the UT to re-make the decision (at [71]).
- 45. The choice was therefore between remitting to the FTT or leaving its decision undisturbed notwithstanding its flaws, as s. 12(2)(a) TCEA 2007 permitted (at [72]). That involved the exercise of a discretion. In exercising it he would take into account the substantial sum claimed by Manaquel (£145,000); the prospects of a different outcome if the FTT were asked to determine the application again; the nature of the application, and the resources of the parties and the justice system which it had already consumed; and the overriding objective which required among other things that cases be dealt with in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties (at [73]).
- 46. He then considered how many of the points originally relied on by Manaquel would still be material to any reconsideration, having regard to his decision on the date issue in the light of *Hussain*. Eight grounds had been identified in Manaquel’s application notice as justifying an award of costs, which he summarised as follows (at [75]):
 - “75 ... (a) Two grounds concerned the form of the notice and the argument that it was “unsavable by variation” and therefore doomed to fail. (b) Two relied on Lambeth’s failure to reinspect and its reliance on the hazards of excess heat and hot surfaces and materials despite the works done by Manaquel to improve the operation of the heating and hot water system. (c) Two concerned Lambeth’s failure to disclose the record of its inspections and its hazard score calculations for the hot surfaces and materials hazard. (d) One suggested an inconsistency between reliance on the highest level of Category 1 hazard in respect of excess cold, and a statement in the improvement notice that a prohibition order was not required

because there was no “imminent risk of serious harm to the health and safety of the occupants”. (e) And one focussed on Mr Ham’s invitation to the FTT to adjourn the hearing to allow more evidence to be adduced.”

47. Of these he held that grounds (b) and (e) were misconceived; and ground (d) was admittedly a make-weight (at [76]). That left grounds (a) and (c). Although quite lengthy, I think I should set out his reasoning on these two grounds in full:

“78 As to ground (a), I have already explained why the lack of precision in the notice raised no doubt about two of the three hazards or more than two thirds of the prescribed actions and did not justify quashing the notice in its entirety. Variation (in the sense of prescribing different work to reflect the current condition of the Estate) was not a problem for Lambeth. What properly remains of ground (a) in support of the charge of unreasonable conduct is therefore that Lambeth served, and did not withdraw, an improvement notice requiring the installation of new double glazed windows throughout the Estate without excluding those flats which already had double glazing or identifying the flats where work was required. The FTT was entitled to regard the notice as flawed in that respect. But, the FTT having acquitted Lambeth of vexatious behaviour, and having found Ms Ward to be an experienced professional who took her responsibilities seriously, it is not difficult to see a perfectly reasonable explanation for the form of the notice, namely, that as Ms Ward explained in her evidence, Lambeth considered it unnecessary to identify each window, or each flat. It would have been obvious on inspection which windows were not already double glazed, and if there was any doubt, it could be resolved by liaison with Lambeth’s officers which the notice also required. The notice appears to me to be capable of a common sense reading and to be adequate for its purpose. The FTT was persuaded to take a different view, but the availability of an alternative interpretation of the notice would make it very difficult for the FTT to conclude, were it asked again, that there was no reasonable explanation for the form it took.

79. As to ground (c), Lambeth’s failure to preserve records of inspections is certainly a ground on which it could be found to have conducted the proceedings unreasonably. The absence of one of the hazard scores was of little or no consequence as the existence of the relevant hazard was not seriously disputed, but it was a further example of poor record keeping by Lambeth which could be taken into account.”

48. Manaquel’s case for suggesting that Lambeth had acted unreasonably was therefore very much weaker than the case originally presented to the FTT. The FTT had not been persuaded by the original eight grounds, and the Deputy President said that there must be a significant chance that the much smaller catalogue of errors which survived contact with *Hussain* would also fail to persuade the same panel if the matter were remitted to them (at [80]).

49. He also took into account that Manaquel itself had significant responsibility for directing the FTT's attention away from the condition of the Estate when the notice was served and persuading it to focus instead on its condition two years later, which was legally irrelevant. Lambeth had acquiesced in that error but was not the source of it. That would be relevant to the second and third of the *Willow Court* stages (assuming the FTT found unreasonable conduct), namely whether an order should be made, and, if so, the quantification of it.
50. He also took into account the nature of the application; appeals to the FTT usually involve no costs-shifting and costs applications are exceptional and should not be allowed to become disputes in their own right.
51. In the light of those considerations he concluded as follows:
- “83. I have come to the conclusion that, in these proceedings, enough is enough, and that, taking all of the matters I have identified into account, despite the flaws in its reasoning, the appeal can be disposed of fairly and justly by refusing to set aside the FTT's decision not to make an order for costs.”

Grounds of Appeal

52. Manaquel appeals to this Court on two Grounds:
- (1) The UT was wrong to find that (i) appeals against improvement notices are to be assessed as at the date of the service of the notice rather than the date of the appeal, and (ii) that an FTT should afford special deference to a local authority's decision to serve a notice.
 - (2) The UT was wrong to approach the appeal on any other basis than that the FTT's substantive decision on the improvement notice was correct.

Ground 1: the date issue

53. Although Ground 1 consists of two limbs, Mr Miller argued them together. The primary question is the first limb, namely the date at which an appeal against an improvement notice should be assessed.
54. Mr Miller accepted that he did not intend to cast any doubt on *Hussain*, which is of course in any event binding on us. But he submitted that one cannot simply read across the decision in *Hussain*, which concerned appeals in relation to licensing decisions under Parts 2 and 3 of the Act, to appeals against improvement notices under Part 1 of the Act. He relied on the principle that although there is a presumption that the same words in an Act of Parliament have the same meaning, this presumption is rebuttable: *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, 2020) at §21.3. The Court in *Hussain* itself had said that appeals “by way of re-hearing” may lie anywhere on a spectrum from re-hearings in the fullest sense of the word where the appellate body treats the matter as if it arose for consideration for the first time to something much closer to a review of the decision under appeal, and that where on the spectrum a particular appeal will fall depends on the context and the intention of Parliament to be discerned from the relevant statutory provisions: see per Andrews LJ at [51]-[52] and

per Lewison LJ at [97]. Mr Miller submitted that the statutory context for appeals against improvement notices under Part 1 of the Act was very different from the statutory context for appeals against licensing decisions under Parts 2 and 3 of the Act.

55. I do not doubt the principle stated in *Bennion* that the presumption that the same words used more than once in an Act have the same meaning is a rebuttable one: this principle has been cited with approval by the Supreme Court more than once, most recently I think in *Wathen-Fayed v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 32, [2025] 1 WLR 3693 at [56] per Lord Hamblen JSC.
56. But it seems to me quite impossible in the case of the Act to interpret the nature of an appeal under Part 1 of the Act differently from the nature of an appeal under Parts 2 and 3, or indeed Part 4. The fundamental principles of statutory construction have been authoritatively expounded in a series of decisions of the House of Lords and the Supreme Court and can be regarded as well settled. A convenient summary can be found in the judgment of Lord Sales JSC in *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28, [2023] 1 WLR 2594 (“*PACCAR*”) at [40]-[41]. The basic task for the Court in interpreting a statutory provision is clear: *PACCAR* at [40]. It is to identify the meaning borne by the words in question in the particular context: *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349 at 396 per Lord Nicholls. The Court’s task is to give effect to Parliament’s purpose and so the provisions in question should be read in the context of the statute as a whole: *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687 at [8] per Lord Bingham. In matters of statutory construction, the statutory purpose and the general scheme by which it is to be put into effect are of central importance: *Bloomsbury International Ltd v Department for Environment, Food and Rural Affairs* [2011] UKSC 25, [2011] 1 WLR 1546 at [10] per Lord Mance JSC. In other words, the purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it: *PACCAR* at [41].
57. So the starting point is to identify the purpose and scheme of the Act. For present purposes this does not seem to me to be difficult. The purpose and scheme of the Act, or at any rate of Parts 1 to 4, is to confer a wide range of new statutory powers on local housing authorities in connection with housing with a view (expressed at the highest level of generality) to improving the standard of residential accommodation in their area. In doing so, Parliament has provided that those affected by the exercise of these new powers should have rights of appeal to the relevant tribunal, namely the FTT in the case of England; and, as I have explained above when setting out the relevant provisions of the Act, has repeatedly provided for the powers of the FTT on hearing such appeals in consistent terms, namely that the appeal (a) is to be by way of re-hearing but (b) may be determined having regard to matters of which the authority were unaware. Provisions to this effect are found in schs A1, 1 and 2 (appeals from Part 1), sch 5 (appeals from Parts 2 and 3), schs 6 and 7, and s. 143 (appeals from Part 4). This is not just a case of a word, or even a phrase, being used by Parliament in different provisions of the same Act in circumstances where the context may require different meanings to be given to them; it is a case of Parliament deliberately and repeatedly choosing to delineate the nature and powers of the tribunal, when hearing appeals against a whole variety of decisions by local housing authorities, in materially identical terms.
58. Given that this is the scheme of the Act, it is to my mind quite impossible to suppose that Parliament intended that the very same words used to identify the nature of an

appeal to the tribunal should be interpreted differently for some appeals than for others. There is no warrant for that either in the language or in the context. Although I accept that the underlying powers are different – licensing HMOs is a different exercise from serving improvement notices – the relevant context appears to me to be the same in each case, namely that the person affected is exercising a right of appeal to the tribunal against a local housing authority’s exercise of their statutory powers. I think it would be contrary to the most fundamental principles of statutory construction to accept that Parliament intended, despite using the same language, that the nature of the tribunal’s powers when hearing such appeals would vary from case to case.

59. In those circumstances I consider that the Deputy President was entirely right to conclude that the decision in *Hussain* was determinative of the date issue in the present case. There is no relevant distinction between the case of an FTT hearing an appeal in relation to licensing under Parts 2 and 3 of the Act, and the case of an FTT hearing an appeal against an improvement notice, or indeed other enforcement action under Parts 1 and 4 of the Act. In each case the question is whether the local housing authority was wrong to take the decision that it did, when it did. As the Deputy President put it at [48] of his decision (cited at paragraph 39 above but repeated here for convenience):

“the question for the FTT should have been whether Lambeth was wrong to serve the notice it did, when it did; works done since the service of the notice could not undermine the validity of Lambeth’s decision, nor was there any requirement for Lambeth’s officers to justify or reformulate the notice in the light of those works.”

60. That is sufficient to explain why I was not persuaded by the first limb of Ground 1. Mr Miller put forward various reasons why it would make sense for the FTT to be able on an appeal against an improvement notice to consider the position as it stood at the date of the appeal rather than as it had stood at the date of service of the notice. For example, he said that improvement notices were based on a categorisation of hazards that depended on an assessment of the future risk of harm; but experience since the service of notice might demonstrate that such risks had not materialised and had been overstated. Or works that might have been required at the time of the notice could have been overtaken by events at the time of the appeal, for example if new and more efficient solutions had been devised in the meantime, or if work had in fact been carried out.
61. I mean no disrespect to his careful argument to say that I do not think it necessary to discuss these various possibilities. It clearly would have been possible for Parliament to provide for the relevant tribunal to determine appeals by reference to the up-to-date position. That might, as Mr Miller submitted, have had some advantages and cure some potential anomalies, although it would also have had the obvious and very significant disadvantage, as he accepted, of making the validity of a notice a completely moveable feast; and most, if not all, of the suggested anomalies could no doubt be adequately dealt with by the powers to vary or revoke notices in appropriate cases. But the question is not what Parliament might have done. The question is what it has done. For the reasons I have sought to give, that is determined by the decision of this Court in *Hussain*, for appeals against improvement notices as much as for appeals against licensing decisions.
62. That leaves limb (ii) of Ground 1 of the appeal, which is the extent to which the FTT

should give deference to the decision of the local housing authority. The difficulty I have with this limb of Ground 1 is that I do not see that it arises on the facts of the present case. The Deputy President's decision is that the FTT erred on the date issue; nowhere, so far as I can see, did he say that the FTT also erred in the degree of deference it gave to Lambeth's decision. Indeed the FTT were, as he identified, very critical of Lambeth, and although he held that some of the criticisms were not warranted, that was because the FTT, having taken the wrong view on the date issue, wrongly thought that it was incumbent on Lambeth to evidence the up-to-date position. On other matters, he accepted that the FTT were entitled to take the view they did.

63. In those circumstances, I do not think that any separate issue arises on limb (ii) of Ground 1. What the Deputy President decided in the UT was that the FTT should have decided whether Lambeth's decision to serve the improvement notice was wrong at the date of service; he did not decide the standard of review by which the FTT should have judged whether that decision was wrong. We were shown some authority on this question, but I do not think we are called on to decide it and I do not think it is necessary, or would be helpful, to discuss the issue. I therefore say no more about it.
64. Those were the reasons why I concurred in our decision to dismiss Ground 1 of the appeal.

Ground 2 – the costs issue

65. As set out above, the actual decision of the Deputy President was not to set aside the FTT's decision on costs, and one of the main reasons why he did so was that once the date issue had been resolved correctly, it could be seen that few of Manaquel's criticisms of Lambeth were justified, with the result that he thought there must be:

“a significant chance that the much smaller catalogue of errors which survived contact with *Hussain* would also fail to persuade the same panel if the matter were remitted to them”

(see paragraph 48 above).

66. Ground 2 is that the Deputy President here erred because if the matter had been remitted to the FTT, they would have been bound to assess the costs on the basis of their decision on the substantive law, which had not itself been appealed.
67. This is a short but not entirely easy point. I think the starting point is that if the matter had been remitted, the FTT would *prima facie* be bound to proceed on the basis that the law was as the Deputy President sitting in the UT had held it to be (correctly, as we have now held), and that if that meant that the criticisms of Lambeth advanced by Manaquel largely fell away, the FTT would be bound to take that into account. That was the view of the Deputy President when refusing permission to appeal against his decision. He said:

“If permission is granted on ground 1, and the appeal on that ground succeeds, my assessments of the merits of the appeal will have been flawed and my determination could be set aside without the need to consider ground 2. If the approach I took to the *Hussain* point was correct, I do not consider that it can sensibly be argued that the conduct

of the proceedings by the local authority should be judged on a false view of the material which was legally relevant to the question to be determined by the FTT.”

68. On analysis, therefore, the question is whether there is any reason why Lambeth would be prevented, if the matter had been remitted to the FTT, from relying on what the law is now established to be. That, as Mr Miller was I think inclined to accept, seems to me to engage the principles of *res judicata*.
69. Mr Miller said that the parties adopted the common position before the FTT that the appeal was to be decided by reference to the up-to-date position. This was not just Manaqel’s position but had been positively affirmed by Lambeth, and the FTT had decided the substantive question on that basis. Lambeth had not appealed the substantive decision, and Mr Miller submitted that when it came to costs, Lambeth could not go back on the position that had been common ground before the FTT.
70. Mr Miller advanced this argument skilfully. But in the end I am not persuaded by it. I think one has to bear in mind the particular nature of the FTT’s jurisdiction when dealing with an application for costs under Rule 13. I accept that in ordinary litigation between A and B, if A succeeds in his claim and B does not appeal, the costs will fall to be determined on the basis of A’s success, even if by the time costs come to be decided subsequent developments in the law show that A should not have succeeded. That is no doubt because B, not having appealed, is estopped by *res judicata* from disputing that A was the successful party on the substantive issue.
71. But the present case is not quite like that. Here the substantive issue for the FTT was whether the improvement notice should be quashed or upheld, in whole or in part. The FTT’s decision was to quash the notice in its entirety. Lambeth, not having appealed, is no doubt estopped from disputing, when it comes to costs, that the FTT were right to quash the notice. But the issue under Manaqel’s Rule 13 application is not whether the notice should have been quashed or which party was successful. The issue (or to be more precise, the issue in the first stage of the three-stage process set out in *Willow Court*) is the very different one whether Lambeth acted unreasonably. The FTT’s substantive decision was not concerned with that question, and I do not see that there is any *res judicata* preventing Lambeth from submitting that on a true analysis of the legal position many of the criticisms made by Manaqel can now be seen to be misdirected.
72. The point can be tested another way. Lambeth could not have appealed the FTT’s decision on the Rule 13 application as it was the successful party. It was Manaqel that appealed. If Lambeth had been aware of the date issue, it could have responded to Manaqel’s appeal by seeking to uphold the FTT’s decision to dismiss the Rule 13 application by relying on the date issue. I do not think that the fact that it had not appealed the substantive decision would have precluded it from doing so. There may have been other perfectly sound reasons for concluding that an appeal against the substantive decision to quash the notice would have failed, not least the FTT’s conclusion that the notice was not specific enough; but I do not see that this would have prevented Lambeth from deploying the date issue as at least a partial answer to the Rule 13 application. This is in effect what has happened, albeit the date issue was first raised by the Deputy President himself rather than identified by Lambeth. Any other view would mean that Lambeth would have had to pursue an appeal against the substantive

decision, raising the date issue, in order to rely on it as an answer to the Rule 13 application. That does not seem to me to be right or a sensible result.

73. In those circumstances I have come to the conclusion that Ground 2 is not well-founded. It was not disputed by Mr Miller that the Deputy President had a discretion under s. 12(2)(a) TCEA 2007 whether to set aside the FTT's decision on costs and remit it, or to decline to do so; nor was it suggested that there was any other reason to criticise the exercise of his discretion not to set it aside apart from the point raised in Ground 2 of the appeal.
74. I would therefore dismiss the appeal on this Ground also, and with it the appeal.

Lady Justice Andrews:

75. I agree.

Lord Justice Phillips:

76. I also agree.