



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

**Case References** : **CAM/00MF/PHI/2019/0010**

**Site** : **Mereoak Park, Three Mile Cross,  
Reading, RG7 1NR**

**Park Home Addresses** : **1, 2, 3, 10, 16, 19, 21, 30, 32, 37, 39, 40, 42,  
46, 48 and 50 Mere Oak**

**Applicants** : **East Sussex Mobile Home Parks Ltd**  
**Representative** : **Mr John Clement of IBB Solicitors**

**Respondent** : **The Occupiers of the Addresses**  
**Representative** : **Mrs Hazel Kelston-Merritt, Secretary  
Mereoak Park Residents' Association**

**Date of Application** : **12<sup>th</sup> June 2019**

**Type of Application** : **To determine questions arising under the  
Mobile Homes Act 1983 or an agreement to  
which it applies – section 4 Mobile Homes  
Act 198**

**Tribunal** : **Judge JR Morris**  
**Mr G Smith MRICS, FAAV, REV**

**Date of Hearing** : **5<sup>th</sup> September 2019**

**Date of Decision** : **9<sup>th</sup> September 2019**

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**DECISION**

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**Decision**

1. The Tribunal determined that as soon as practicable the Site Owner shall provide the Occupiers with a statement of their personal service charge account.

2. The statement should show the following:
  - 1) To what extent the Occupier is in credit or debit;
  - 2) To what extent the Occupier is in credit or debit with regard to the Occupier's share of £322.27 in respect of the £17,725.33 specifically;
  - 3) If the Occupier is in debit then the statement shall be accompanied by a demand stating the amount of the £322.27 which is outstanding and stating that it is payable within 28 days of receipt of the statement and demand.
  - 4) To what extent the Occupier is in credit or debit with regard to the Occupier's share of £141.23 in respect of the £7,683.52 specifically;
  - 5) If the Occupier is in debit then the statement shall be accompanied by a demand for such amount of the £141.23 which is outstanding. The amount outstanding should be paid by monthly instalments over the remaining months of the current service charge period ending in 2020.
  - 6) The statement should also show the extent to which, after the above has been taken into account, the Occupier is in credit or debit in respect of the service charge, excluding the water charge, but taking into account any adjustments following the last Tribunal decision reference: CAM/ooMF/PHI/2018/0007 and CAM/ooMF/PHC/2018/0002 as this may affect the amount an Occupier owes or is in credit with regard to the water charge.

## **Reasons**

### **Background**

3. The Applicant applied to the Tribunal for an order that the Occupiers must pay the Site Owner a sum of £463.51, representing their respective share of the water charges payable for the Park for the period between 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019. Documents received by Tribunal were:
  - Application Form
  - List of Respondents
  - Sample Written Agreement
  - Copies of Water Bills
4. The Occupiers are said to be severally liable to pay these charges under Express Term 3(2) of their Written Agreements and/or Implied Term paragraph 21(b) of Schedule 1, Part 1 of the Mobile Homes Act 1983 (as amended).
5. The sum for the period 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019 totalled £25,492.91, as evidenced by the Thames Water Invoices provided with the Application. This includes an agreed reduction of £52,539.49 in respect of leakages. The sum of £25,492.91 has been divided equally between the 55

owner-occupied homes stationed on the Park during the period resulting in a charge of £463.51 per pitch.

6. The Tribunal had already received an Application on 29<sup>th</sup> April 2019, Case Reference: CAM/ooMF/PHC/2019/0006, from the Respondent Occupiers as Applicants, which includes amongst other matters an application to determine the water charge for years 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019.
7. The Procedural Judge found that the two cases could be heard together and this happened on 5<sup>th</sup> September 2019.
8. Having heard the two cases the Tribunal found that the issues in both Applications regarding the cost of water which had been an item in the service charge were essentially the same and the decision in one would be a repetition of the other. Notwithstanding that the Occupiers' application was received first it covered several items of the service charge, each of which would need to be addressed. This Application only dealt with the water charge enabling the decision to be issued more promptly. This was important to both parties as the Site Owner had already paid the water charges and the Occupiers were anxious to know their individual liability for the cost.
9. The Decision in respect of this Application by the Site Owner will be referred to and will apply to the issue of the water charges in the subsequent Decision in respect of the Application by the Occupiers, Case Reference: CAM/ooMF/PHC/2019/0006.

## **The Law**

10. Section 2 of the Mobile Homes Act 1983 ("the Act") provides that the terms of Part 1 of Schedule 1 to the Act shall be implied and shall have effect notwithstanding the express terms of the Agreement. Paragraphs 16 to 20 of Chapter 2 of Schedule 1 to the Act were introduced by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 and the Mobile Homes Act 2013.
11. Paragraph 21 of Implied Terms – Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 states:

### *Occupier's obligations*

- 21 The occupier shall—
  - (a) pay the pitch fee to the owner;
  - (b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner;
  - (c) ... (not relevant to this Application)
  - (d) ... (not relevant to this Application)
  - (e) if requested by the owner, provide him with documentary evidence of any costs or expenses in respect of which the occupier seeks reimbursement.

## Evidence

12. A hearing was held on 5<sup>th</sup> September 2019 which was attended by Mr John Clements, Solicitor, and Miss Claire Barney, Joint Site Warden for the Applicants and Mrs Hazel Kelston-Merrett, Secretary of the MereOak Park Residents Association and Mr Alan Savory of the Independent Park Home Advisory Service for the Respondents Applicants.
13. Prior to the Hearing of this matter the parties had discussed the issue. It was apparent that some of the invoices were missing and had only just been provided to the Applicants. Mr Savory had produced a list of the invoices received and their amounts and credits. However, this was not as helpful as he had hoped due to the missing invoices. Mr Clements said he could give the Respondents sight of the invoices but as he had only just received them, he did not have copies but said he would provide these to Mrs Kelston Merritt as soon as possible.
14. Mr Clements reiterated what had been stated on the Application form namely that the sum for the period 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019 totalled £25,492.91, as evidenced by the Thames Water Invoices and that this was payable by the Respondents.
15. Mrs Kelston-Merritt on behalf of the Respondents provided a statement in reply. She said that the cost of the water for the Park had been included in the service charge, payment for the water being in arrears i.e. the cost of the invoices for the year April 2014 to March 2015 were included in the service charge for the year April 2015 to March 2016.
16. For several years now the water bills have not been available at the time the Park Manager compiled the spreadsheet for the service charge due to faulty meters and severe leakages.
17. The invoice for £25,492.91 represents the water charges for the two service charge years from April 2016 to March 2017 and April 2017 to March 2018 which amount to £17,725.33 and the water charges from April 2018 to March 2019 which amount £7,767.58. These charges are not disputed and it is agreed they are payable. What is not agreed is that the Respondents are liable for their contribution in the manner demanded in letters that have been sent out namely within 14 days (a copy of the letter was provided on pages 104 and 105 of the Bundle).
18. The Respondents state that the water invoices amounting to £17,725.33 for the two service charge years from April 2016 to March 2017 and April 2017 to March 2018 were due to be paid in the service charge for the year April 2017 to March 2018. However, the invoices were not available until April 2018.
19. Nevertheless, the Respondents have been paying amounts on account for the April 2016 to March 2017 and April 2017 to March 2018. These charges were due to be paid in the service charge for the years April 2017 to March 2018 and April 2018 to March 2019 water charge. The contribution required from each Respondent was £322.27. If there is a shortfall there are sums to be

credited to Respondents due to the Tribunal Decisions. Therefore at least some of the Respondents should have sufficient credit for their April 2016 to March 2017 and April 2017 to March 2018 water charge and may have sufficient to at least cover some of their April 2018 to March 2019 contribution which is due April 2019 to March 2020.

20. With regard to the April 2017 to March 2018 Water Charge of £7,767.58 this should be paid in the service charge for the current year of April 2019 to March 2020. The Respondents calculate this contribution to be £141.23 for each unit, less any credit carried forward from April 2017 to March 2018 in their personal Service Charge accounts.
21. Therefore, the application is unnecessary because the water charges are agreed, the Respondents have paid their contribution towards the outstanding invoices for April 2016 to March 2017 and April 2017 to March 2018 and the water charge for April 2018 to March 2019 should have been collected in the April 2019 to March 2020 service charge.
22. At the oral hearing Mrs Kelston-Merritt and Mr Savory said how aggrieved the Occupiers were as to the manner in which the problems with the water charge had been handled.
23. Firstly, it was said that many, perhaps most, of the Occupiers had personal service charge accounts which had sufficient credit to pay the £17,725.33 outstanding, which the Thames Water Invoice had stated required immediate payment.
24. Secondly, the service charge had always been paid by monthly instalments by most, if not all Occupiers. Therefore, no Occupier was in arrears or in breach in respect of the £7,683.52 as this was not payable until the current year.
25. However, the Application and a letter dated 18<sup>th</sup> April 2019 to all the Occupiers (a copy of which was provided on pages 104 and 105 of the Bundle) required the whole £25,492.91 outstanding to be paid by each Occupier paying £463.51 within 14 days of the date of the letter.
26. If nothing had been paid and the whole amount was payable and the contract for water was with each Occupier, no reasonable authority would require payment in that manner. Mr Savory, referred to the *Wednesbury Rule* (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] EWCA Civ 1) on reasonableness in respect of public authorities. In the event it was said that many of the Occupiers had already paid a contribution which would pay all or most of the £17,725.33, which was to be paid immediately and the remaining £7,683.52 is only due this current year. Mrs Kelston Merritt said that she together with other Occupiers had been paying £40.00 a month since May on account of the water charge for April 2019 to March 2020. It was added that the Site Owner already held a lot of the Occupiers money.
27. Mr Clements submitted that there were three issues that needed to be addressed.

28. Firstly, what are the total water charges for the period 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019. It was agreed between the parties that this was £25,492.21 as per the invoice dated 15<sup>th</sup> March 2019.
29. Secondly, it was necessary to assess how much each Occupier was in credit and then how much if anything, the Occupier would be required to pay firstly of the £17,725.33 and secondly of the £7,683.52 payable in the year 2019 to 2020. He said this was an accounting exercise which would need to be carried out by the Site Owner.
30. Thirdly, as the total amount was agreed, it was requested that the Tribunal set a time scale for the two amounts of £17,725.33 and £7,683.52. He suggested a period of 28 days from receipt of the letter to each Occupier stating how much each individual was in credit and how much, if anything, was owed firstly for £17,725.33 and secondly for the £7,683.52. He said this was standard practice for tribunals and courts.
31. Mr Clements added that the reason Miss Barney had not paid the water charge since 2<sup>nd</sup> March 2016 was because it was clearly incorrect. She said that she had been in touch with Thames Water on a regular basis and that she was pleased with the leakage allowance of £52,539.49 that she had been able to achieve. The officials of Thames Water with whom she had been communicating had subsequently expressed the view that they had been particularly generous.
32. The Tribunal agreed that Miss Barney had done well to obtain the leakage allowance. However, the demands requiring payment could have been dealt with better. The sum of £17,725.33 should have been distinguished as an outstanding payment which had to be paid promptly, whereas the £7,683.52 was for the current year and needed to be paid accordingly. Also, it was not clear to the Tribunal whether the '14 days' letter had taken account of all the credits to be attributed to the Occupiers.

### **Tribunal's Decision**

33. The Tribunal found from the invoices provided that the total sum owed by East Sussex Mobile Home Parks Ltd to Thames Water was £25,492.91 for the period 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019. Of this £17,725.33 had been outstanding but was now paid by the Site Owner. The Occupiers are now liable to the Site Owner for this sum.
34. It was also found that the reason for the sum having accrued were the problems with the meter and leakages, resulting in bills which clearly did not reflect the Occupiers' usage. The Tribunal acknowledged that Miss Barney had been able to obtain a significant discount of £52,539.49 on behalf of the Occupiers.
35. The Tribunal found that of the £25,492.91 for the period 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019, the water charge for the period April 2018 to March 2019, which is payable in the service charge for April 2019 to March 2020, is

£7,683,52. The Occupiers are liable for this over the period April 2019 to March 2020 in the manner they usually pay it i.e. by instalments.

36. The Tribunal also found that a number of Occupiers only known to the Site Owner in accordance with data protection laws, were in credit in respect of their personal accounts.
37. The Tribunal determined that as soon as practicable the Site Owner shall provide the Occupiers with a statement of their personal service charge account.
38. The statement should show the following:
  - 1) To what extent the Occupier is in credit or debit;
  - 2) To what extent the Occupier is in credit or debit with regard to the Occupier's share of £322.27 in respect of the £17,725.33 specifically;
  - 3) If the Occupier is in debit then the statement shall be accompanied by a demand stating the amount of the £322.27 which is outstanding and stating that it is payable within 28 days of receipt of the statement and demand.
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  - 6) The statement should also show the extent to which, after the above has been taken into account, the Occupier is in credit or debit in respect of the service charge excluding the water charge but taking into account any adjustments following the last Tribunal decision, reference: CAM/00MF/PHI/2018/0007 and CAM/00MF/PHC/2018/0002 as this may affect the amount an Occupier owes or is in credit with regard to the water charge.

**Judge JR Morris**

## **ANNEX 1 - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.