



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

Case Reference	: CHI/18/UH/PHC/2018/0009
Property	: Pathfinder Village Exeter EX6 6DB
Applicant	: Paul Thomas Minter
Respondent	: Avondale Property Holdings Limited
Representative	: Paul Kelly Tozers LLP (Solicitors)
Type of Application	: Determination of any question arising under the Mobile Homes Act 1983 (the Act) or an agreement to which it applies
Tribunal Members	: Judge C A Rai (Chairman) T E Dickinson BSc FRICS Chartered Surveyor
Date and venue of Hearing	: 26 March 2019 Exeter Magistrates Court The Court House Heavitree Road Exeter Devon EX1 2LS
Date of Decision	: 17 April 2019

DECISION

1. The Tribunal accepts that the Respondent's method of apportionment of metered water charges is lawful and in accordance with current OFWAT guidance; It does not find evidence that the annual amount charged to the Applicant for water is excessively high because two other properties outside the Park share the water supply.
2. The Tribunal does not find that leakage from water pipes within the Respondent's Park is attributable to the Respondent's negligence or failure to regularly inspect monitor and/or maintain the water supply pipes.
3. The evidence provided to the Tribunal has not supported the Applicant's assertion of a dramatic increase in the amount or cost of the water consumed within the Park during the years 2016 – 2019; [the actual charges for which years are based on consumption in the years 2015 – 2018].

4. The reasons for its decision are set out below.

Background

5. Mr Minter a joint occupier of 17 Holland Copse, a home within Pathfinder Village Exeter, (the **Park**), made an application dated 18 October 2018 to the Tribunal, (the **Application**), as advocate for and on behalf of the Park residents seeking a determination of three questions relating to the Park residents water supply.
6. The Tribunal issued Directions dated 7 December 2018, in which it requested a further information from the Applicant and a response from the Respondent within a stipulated time. It advised both parties that it proposed to determine the Application without a hearing unless either party objected.
7. The Respondent's Representative requested an oral hearing and subsequently the Tribunal issued Further Directions, dated 6 February 2019 requiring, amongst other things, the submission of the Hearing Bundles by the stated date.
8. Both parties complied with the Directions.

Inspection

9. On the morning of 26 March 2019, prior to the Hearing, Tribunal Member Mr Dickinson accompanied by the Applicant, Peter Gabbitas and Robert Valentine, (two other residents of the Park), Paul Kelly, (Solicitor for the Respondent), Christopher Ball MD of the Respondent, Adrian Payne, (Park Manager) and the Tribunal Clerk, Andrew Webber inspected the Park. They traversed the central roads and looked at the locations of some previously reported water pipe leaks, information in relation to which is contained in the Hearing Bundle. The locations of the four water meters, which measure the Park supply were identified.
10. Pathfinder Village was established after the Second World War and has been owned by the Respondent for more than 30 years. It is a well maintained attractive residential mobile home Park currently comprising of around 280 homes set within 40 acres of woodlands. Judge Rai did not attend the joint inspection but met Mr Dickinson at the Park later, when he explained what the parties had shown him during the inspection.

The Hearing

11. Mr Minter, with assistance from Mr Gabbitas and Mr Valentine, presented the Applicant's case. Mr Kelly presented the Respondent's case and Mr Payne, the Park Manager, clarified his written witness statement, a copy of which is within the Bundle and forms part of the Respondent's response to the Application.

The Applicant's case

12. The Application identified three questions for the Tribunal to determine:-
- a. Are the residents paying too much for water because the gross metered consumption includes the supply to two houses outside the Park?
 - b. Is the Respondent failing to take adequate action in relation to the repair of leaks within the Park resulting in abnormally high water charges?
 - c. Why have the annual water charges increased dramatically without any identified reason or justification?
13. The Applicant's evidence disclosed that he had considered making an application to the Tribunal for a determination approximately two years ago but had not. Mr Minter explained to the Tribunal that, at that time, the residents thought that that it would be too expensive to pursue such an application. They believed that even if the application had succeeded the Tribunal could have determined that water meters should be installed at individual expense. Last year when the residents reconsidered the matter he formed the view that the costs of an application would not be prohibitive and decided to proceed.
14. Since the Application has been made the Respondent has offered to allocate an additional two shares of the water costs to the two "off Park" houses, Treetops and Glanvills, which also benefit from and contribute towards the cost of the Park water supply. The Applicant suggested that as each house has four or five bedrooms it is likely that the average consumption of water by each household would be greater than for a "park home", usually occupied by one or two people.
15. The total charge for water for the current year 2018 – 2019, (based on actual metered consumption for the preceding year 2017 – 2018), is higher than it was in preceding years. He does not know if this can be attributed to more leakage. Evidence of leakage is anecdotal in that he is not aware of any written record estimating the volume of lost water. Copies of invoices within the Bundle only identify costs associated with replacing pipes and repairing leaks during the years to which these relate.
16. Mr Minter is unaware that there is any formal system for reporting water leaks within the Park. He said that he would have expected the Respondent to have a "planned and rolling maintenance programme" for the systematic inspection and replacement of vulnerable water pipes.
17. Mr Gabbitas also questioned whether water leaks are being investigated and mended quickly enough to prevent unnecessary wastage of water. He said, that based on the metered

water usage in the Village Hall, the consumption recharged to the residents is excessive and exceeds the annual average for a South West Water consumer.

18. Since the Application was made the Respondent has accepted that it cannot recover an administration charge and will refund those charges previously collected. It was recently told about the decision in the **Britaniacrest Case – [2013] UKUT 0521 (LC)** in which the Upper Tribunal upheld a decision made by the leasehold valuation tribunal that the park owner had no rights, under the written statement, to levy an additional charge for administering the supply of gas and electricity. The Respondent has accepted that it is bound by that decision to refund the administration charges that it has, until now, been making in respect of the recharge for water because the written statement does not specifically authorise it to make an administration charge.

The Respondent's Case

19. Prior to making substantive submissions Mr Kelly asked the Tribunal to examine the evidence relating to the actual metered costs of water consumed in the Park during the five year period disclosed in the Bundle. He referred to pages 79, 81, 83 86 and 88 in the Bundle. The Tribunal has put the relevant figures into a schedule a copy of which forms part of this decision. [Page 10].
20. Mr Kelly said that an analysis of those figures for the five periods identified, based on the metered consumption of water for the years 2014 – 2015 to 2018 – 2019 disclosed that the annual water charges were for the most part stable that there had not been any excessive increase.
21. He had introduced, (by agreement), additional evidence prior to the start of the Hearing, which was a copy of the sewerage bill for the Park Manager's home for the period between 1 April 2019 and 31 March 2020, and showed a credit of £50, being the government contribution to an individual household water bill. The Respondent had requested that South West Water credit this to individual site owners sewerage bills, for which each is personally responsible, instead of it being made to the Park water invoices. He said, taking account the £50 credit, the water charge payable for the current year compares favourably with the amounts paid during past years.
22. He also referred to the copy of the Land Registry title for the Park , [in the Bundle at pages 112 onwards], which disclose the continuing obligation to supply the two houses, (Treetops and Glanvills).
23. The OFWAT Guide to Water Resale suggests several alternative options for the division of collective metered water charges. [A copy of the Guide is in the Bundle. [Page 91 onwards]. The Respondent has decided to divide the total charge equally between

the number of Park homes as it considers this to be the only practical solution. It is now prepared to make a further concession by allocating two shares of the costs to each of the two houses. It also includes new homes within the calculation although these are unlikely to be occupied for the whole of the current year in which they are first included.

24. The total of the metered water charge during the period 1 May in the current year to 30 April in the subsequent year forms the basis of the annual calculation. There are four South West Water meters within the Park which measure the supply to Park residents and a fifth meter for the site office which is separately paid for by the Respondent. Four private meters measure the water consumed by the Hairdressers, Village Hall, Doctors Surgery and Village Shop. This consumption is deducted from the collective charge, (and the commercial occupiers are separately invoiced), and the balance is divided between the total of the current number of private homes + the managers home, +the projected number of new homes for that year + the two private houses. Until now the charge has been equally divided between these owners and increased by the addition of an administration charge. Owners are notified in August and pay one twelfth of the total charge each month with the Pitch Fee.
25. Pages 124 – 140 of the Bundle contain copies of the logs of the daily meter readings. Mr Payne told the Tribunal that daily meter readings were taken in accordance with the Park Manager Operating Procedures, a copy of which is within the Bundle. [Page 141 onwards]. The Park meters are read and recorded with daily readings emailed to the Respondents Finance Director. This enables the Manager and Finance Director to log and monitor the consumption and increases awareness of irregular consumption which in turn assists in identifying leaks.
26. He said that is not possible to prevent leaks from occurring in a park the size and age of the Pathfinder Village. The underlying soil is clay. Pipes are regularly monitored and replaced as necessary but the nature of the soil contributes to the risk of damage and there is no complete map of the underground structure. The Respondent believes that it is inevitable that some leaks will occur but believes that the Park Operating Procedures enable adequate and appropriate monitoring. When works are undertaken to fix leaks pipes are renewed. Mr Kelly referred to an invoice contained at Page 142 of the Bundle which refers to a repair in which coupling inserts were installed to improve the pipework.
27. Rule 19 of the Park Rules, [Page 192 of the Bundle], requires the owners to protect all external pipes from frost damage.
28. It was stated that the Respondent expected to recover the cost of any leakage unless the leakage is attributable to its negligence. There is no evidence of that. The Respondent does not know which meters serve which properties. A

recent investigation revealed two separate supplies were connected a single home.

29. As confirmed by Robin Huckerby, in his statement, [Page 38 of the Bundle], the Respondent does not believe it is possible to measure the actual water consumption of the two houses; Even if a private meter is fitted within the Park Mr Payne is not confident there is a single supply pipe serving each or both of the houses.
30. Generally although the Park Manager conscientiously tries to monitor leaks it is not always possible to upgrade the leaking pipe or identify the source of a leak quickly. Mr Payne does not believe that the leaks substantially contribute to the increase in water usage. He believes that in fact the increase in consumption is attributable to natural variations.
31. In response to questions from Mr Valentine about how quickly leaks are investigated and mended he said that once a leak is identified or reported, work is commissioned, undertaken and completed as soon as possible. Residents do not always report leaks promptly and the source of some leaks has been difficult to isolate.
32. Mr Valentine and Mr Gabbitas were not entirely satisfied with the responses made on behalf of the Respondent. They stated that the residents wanted a more collaborative approach to enable them to understand, and do something about, the increase in the cost of the water.
33. Mr Payne explained that when a leak is reported he will try to identify the source using a listening stick, which apparently resonates or vibrates when the source is identified underground. If he cannot locate and deal with the source of the leak himself, he will call out a local contractor. The invoices in the bundle identify the contractors who regularly undertake work for the Respondent.
34. He acknowledged that it would be desirable to replace all the water pipes within the Park but said that although the Respondent has a rough idea of the location of the mains supply it has no reliable information regarding all the spurs. He does not believe it will ever be possible to replace all of the pipes.
35. Mr Gabbitas said that he would have expected an occupier to use 98/101 cubic metres of water in a year but that the average annual consumption is 165 cubic metres. It was accepted that it would be impossible for Mr Payne to comment on that observation.
36. In response to questions from the Tribunal Mr Payne said that installing stopcocks when repairing leaks made would make it easier in the future to monitor the supply and isolate

leaks but this is an ongoing programme which will not provide an instant solution.

The Law

37. The Tribunal's jurisdiction to determine the Application is contained in section 4 of the Act.

4 Jurisdiction of the court England [and Wales]

The court shall have jurisdiction to determine any question arising under this Act or any agreement to which it applies, and to entertain any proceedings brought under this Act or any such agreement.

(1) In relation to a protected site in England [or in Wales], a tribunal has jurisdiction--

(a) to determine any question arising under this Act or any agreement to which it applies; and

(b) to entertain any proceedings brought under this Act or any such agreement, subject to subsections (2) to (6).

(2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose.

(3) In relation to a protected site in England [or in Wales], the court has jurisdiction--

(a) to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1

(termination by owner) under this Act or any agreement to which it applies; and

(b) to entertain any proceedings so arising brought under this Act or any such agreement, subject to subsections (4) to (6)

(4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question

(5) A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.

(6) Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).

Reasons for the Decision

38. **Increased water charges and off site Properties** - The Tribunal has prepared a schedule of the water charges for the last five years using the information extracted from the invoices and the recharge information within the Bundle. It has deducted the administration charge from the gross calculation to show a net charge payable by the pitch owners from October in the year in which the calculation is made. The amount due in October 2019 will be £288.31. This is a higher amount than that calculated (with a similar adjustment) for the two previous years but broadly similar to the amount payable from October 2016.

39. Mr Kelly suggested that if the £50 allowance from the Government is deducted the 2019 charge is not substantially different from that made in any other year. In fact the Government £50 contribution was introduced in 2011 and is expected to continue until 2020.

[<https://www.southwestwater.co.uk/bills/5oreduction>].

40. It is not clear from the evidence of the Respondent for how long the government contribution has been credited

towards the Applicant's sewerage bills. In his written statement, Mr Huckerby said South West Water had offered the discount to Avondale and he had requested that it be applied as a credit to the sewerage bills, which presumably was done in 2011 or 2012. If that is the case all of the annual charges should be adjusted by crediting the allowance in every year to enable a fair comparison and the Applicant's submission that the cost of the water has increased is correct. The increase in 2018 – 2019, when compared with the consumption for the preceding year, is £3.49 per month; However the consumption in that year was the lowest during the five year period; the monthly increase when compared with consumption in 2014 – 2015 is £2.17. During the same period of five years the consumption of the four commercial properties decreased from £522.12 in 2014 – 2015 to £371.70 in 2018 – 2019. It is impossible to identify a trend from these comparisons but they illustrate that any comparison of actual figures without appropriate information regarding the possible reasons for the variations is not easy to explain.

41. In the absence of any evidence to the contrary the Tribunal does not find that the Applicant has established that the that the Park residents are paying too much for the supply of water. It suggests that the Respondent may wish to consider making one copy of every water invoice it receives available to the Applicant which can either be displayed within the Park or distributed to the residents association. Circulation of this information will facilitate greater transparency between Applicant and Respondent regarding water charges. There is a general agreement between the parties that their relationship is good and this could be improved further by their sharing relevant information.
42. The Applicant has requested information regarding the consumption of water by the two houses supplied from the Park water supply. The Respondent has confirmed that it is contractually obliged to provide their supply and is unable to install a meter within the grounds of those properties to measure their actual usage of water. It is not confident that the installation of a meter of the supply pipe within the Park will be accurate because it does not know how many pipes connect the two properties to the Park supply.
43. Questions about the supply to the two houses were previously raised by the Applicant in 2016 when Annice Matten, then secretary of the Pathfinder Village Residents Association, corresponded with the Respondent. Robin Huckerby responded at that time and stated, "we are unable to access the pipework to the 2 houses as this would necessitate their permission which in the past has not been given". [Pages 8 and 9 of the Bundle].
44. No information was offered by the Respondent as to whether any further more recent requests for access to the water pipes have been made. However the Applicant has been offered an increased contribution towards the water charges for these two properties which would help to compensate them if the two properties consume more water than an average Park home. For those reasons the

Tribunal does not believe that the consumption of water by the two “off Park” properties is substantially disadvantaging the residents of the Park.

45. Repair of Leaks – The Respondent has explained its procedures for monitoring water leaks and repairing the pipework including the private drainage within the Park. The Tribunal has heard evidence of a clear procedure for notifying the Applicant what happens when a leak is reported by one of them or by the Park Manager.

46. It accepts that internally there is a documented Operating Procedure for assessment of consumption and that the Park Manager deals with leakage as and when it is identified.

47. For those reasons it does not find that the Respondent has failed to deal with repair and management of the water pipes. It recommends that the Respondent considers putting in place a written procedure for leak reporting by the Applicant and shares written records of all works undertaken to repair leaks and improve the waterpipe network. Clearly, given the absence of historical records, it must be desirable that both parties should contribute any knowledge gleaned in relation to current repairs and improvements to both water pipes and drainage.

48. Dramatic increase in water charges – This question was raised by the Applicant because of the rise in the total metered cost of water from £69,996.31 for 2017 – 2018 to £82,557.43 for 2019 – 2019, which is an increase of approximately £12,500. The Applicant referred to a £17,000 increase but this is not supported by the information in then invoices.

49. The average cost of the water for the last five years is £75,065.75 per year or £270.40 per year per pitch. [See calculation on schedule]. Taking into account the £50 subsidy which it is assumed has been credited annually to each resident in individual sewerage bills every year, that equates to an average charge of £220.40 per year. The difference between last years charge of £246.79 and £288.31 is just over £40. However the charge for 2017 – 2018 was approximately £34 less than in the previous year, (2016 – 2017). On balance the Tribunal finds that the current year’s charge is broadly in line with the average annual charge for the past five years and does not represent a dramatic increase.

Judge C A Rai (Chairman)

Schedule of water charges for five years starting 1 April 2014 and ending 30 March 2019

Charge Period	2014 - 2015	2015 – 2016	2016 - 2017	2017 - 2018	2018 - 2019	Total 5 years	Average
Based on							
Actual Period	2013- 2014	2014 – 2015	2015 - 2016	2016 - 2017	2017 - 2018		
Total invoiced Cost of Water	£70,032.33	£77,363.11	£75,409.58	£69,966.31	£82,557.43	£375,328.76	£75,065.75
No of homes	268	271	277	282	285		
Credit (Commercial Prop)	£522.12	£400.55	£379.90	£369.80	£371.70	£2,044.07	£408.81
Administration	£9.12	£9.12	£5.47	£5.47	£5.47		
Gross annual charge	£271.47	£293.11	£276.33	£252.26	£293.78		
Net annual charge (less administration)	£262.35	£283.99	£270.86	£246.49	£288.31	£1,352.00	£270.40

**CHI/18UH/PHC/2018/0009
Pathfinder Village Exeter EX6
6BD**

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.