



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

Case Reference : CHI/24UD/PHC/2016/0015

Property : 32 Hillview Manor Park, Winchester Road,  
Eastleigh, Hampshire. SO50 7JF

Applicant : Mr A G Harris

Representative : ---

Respondent : Mr A Barney

Representative : Mr Gale

Type of Application: Application, by occupier for a determination of any  
question arising under the Mobile Homes Act 1983  
(as amended) ("the 1983 Act") or agreement to  
which it applies.

Tribunal Members : Judge P.J. Barber  
Mr P D Turner-Powell FRICS

Date and venue of Hearing : 12<sup>th</sup> December Chichester Magistrates Court &  
2016 Tribunals Centre, 6 Market  
Avenue, Chichester, west  
Sussex. PO19 1YE

Date of Decision: 19th December 2016

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**DECISION**

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### **Decision**

- (1)** The Tribunal determines that (a) the Applicant is responsible for repairing the conservatory and the base upon which the conservatory stands (b) the Respondent site owner is responsible for repairing the base upon which the Applicant`s mobile home, other than the conservatory, is stationed.
- (2)** In regard to the Applicant`s request that an order be made as to compensation in relation to his repair costs, the Tribunal makes no order and/or direction under its powers arising from Section 231A of the Housing Act 2004.

### **Reasons**

#### **INTRODUCTION**

1. The application dated 6<sup>th</sup> September 2016, is for a determination of a question arising under the 1983 Act or the agreement to which it applies. The Applicant alleged that the base on which his mobile home is stationed, is cracked and dropping and in need of repair and that in consequence, the doors to the conservatory structure adjoining the mobile home, were not closing properly and also that the conservatory structure was starting to move away from the main part of the mobile home. The Applicant alleged that the cause of the cracking to the base, might result from subsidence and/or surface water drainage problems on the site and/or the inadequate construction of the base.
2. Directions were issued in the matter on 20<sup>th</sup> September 2016 and 6<sup>th</sup> October 2016, the latter referring to the need for an oral hearing of the matter and setting a timetable by which the parties were to prepare and bring the case forward for hearing.
3. The Respondent site owner submitted a statement of truth dated 26<sup>th</sup> October 2016, together with a number of exhibits and witness statements. The Applicant provided an undated statement in response.
4. The Tribunal has been provided with a bundle of documents by or on behalf of the Respondent, which include copies of the application, the Respondent`s statement of truth dated 26<sup>th</sup> October 2016, the Applicant`s statement in response, the directions, the Respondent`s witness statements, and various reports.

#### **INSPECTION**

5. The Tribunal inspected the property immediately prior to the hearing in the presence of the Applicant Mr Harris and his Son, and the Respondent Mr Barney, Mr Gale of counsel, and also Mr Broadhead, the Respondent`s surveyor. The site within which the property is located, is known as Hillview Manor Park and comprises 38 homes; Hillview Manor Park is located adjacent to Winchester Road, near Fair Oak, Eastleigh, Hampshire ("the Site"). The main entrance to the Site is from Winchester Road and Home Number 32 ("the Home") is located towards the north-eastern end of the Site, parallel to Winchester Road; The entrance to the Site leads immediately into a tarmac drive and a well marked car parking area, with lighting and some peripheral ornamental walling. The Site includes a large former garage building. In broad terms, the Site slopes downwards from west to east and the Home is on the lower eastern side of the Site and is reached by a wide shared concrete path. The pitch comprising the

Home, is enclosed by fencing and/or shrubbery; there is a brick shed outbuilding and another smaller shed type structure. The mobile home is located on a rectangular concrete base, with low brick walling approximately 0.5 metre high, enclosing the space between the concrete base and the underside of the mobile home structure. There is an outer concrete "skirt" approximately 0.65 metre in width, laid all around the circumference of the mobile home, although a section of the concrete skirt close by the steps leading to the conservatory, was noticeably newer. The conservatory or entrance porch is approached via a short flight of steps; inside the conservatory, there was a noticeable gap between the edge of the floor and the side wall of the mobile home itself. The conservatory has a door at each end, neither of which was closing properly. The front door to the mobile home itself, is located within the conservatory; the Tribunal did not inspect the mobile home internally, but it was evident from the conservatory with the front door open, that the nearest internal door, leading to the kitchen was not closing very well.

6. The rear door of the conservatory leads to further steps leading in turn, to a lower garden area to the north of the mobile home. The Applicant had set up a spirit level on the rear concrete skirt section, which appeared to show a drop of approximately 3" from a true horizontal position. A split in the rear concrete skirt section, adjacent to the middle of the end or northern wall of the mobile home, was noticed. The Applicant had dug a small trial hole in that vicinity, which he said showed an absence of hardcore filling laid underneath. There is a small timber, vertical hatch door near the entrance steps, set into the low brick walling, giving limited access to the void between the underside of the mobile home and the main rectangular concrete base. The Conservatory was located partly on a separate base, and partly on the main base for the mobile home with lower face brick cladding; there was a substantial retaining wall to the east of the mobile home and some paving was laid between the concrete skirt and the retaining wall. The ground dropped away on the far side of the retaining wall down to the nearby carriageway of Winchester Road. A number of drainage gulleys was visible, including four surface water drainage outlets inset within the length of the retaining wall. The mobile home itself had cream painted elevations under a pitched and tiled roof. ( Paul, I doubt that it was a real tiled roof. I wonder if it is necessary to describe the mobile home , which was a fairly standard product of its type.)

## **THE LAW**

7. Paragraph 21 to Schedule 1 of the 1983 Act provides that:

*"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) keep the mobile home in a sound state of repair;*

*(d) maintain—(i) the outside of the mobile home, and*

- (ii) *the pitch, including all fences and outbuildings belonging to, or enjoyed with it and the mobile home,*  
*in a clean and tidy condition; and*
- (e) *If requested by the owner, provide him with documentary evidence of any costs or expenses in respect of which the occupier seeks reimbursement. ”*

Paragraph 22 to Schedule 1 of the 1983 Act provides that:

*“Owner`s obligations*

*22. The owner shall—*

*(a) if requested by the occupier, and on payment by the occupier of a charge of not more than £30, provide accurate written details of—*

*(i) the size of the pitch and the base on which the mobile home is stationed; and*

*(ii) the location of the pitch and the base within the protected site;*

*and such details must include measurements between identifiable fixed points on the protected site and the pitch and the base;*

*(b) if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of—*

*(i) any new pitch fee*

*(ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier under the agreement; and*

*(iii) any other charges, costs or expenses payable by the occupier to the owner under the agreement;*

*(c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other facilities supplied by the owner to the pitch or to the mobile home;*

*(d) maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site;*

*(e) ...*

*(f) ...*

### **HEARING & REPRESENTATIONS**

8. The hearing was attended by the Applicant Mr Harris and his Son who represented the Applicant, and the Respondent Mr Barney, the Respondent`s counsel Mr Gale, a former Site Manager Mrs Brown, and Mr Broadhead.
9. The parties agreed at the outset, that the two issues for determination were:
- (1) who has the responsibility for the mobile home base?
- (2) whether compensation should be ordered in favour of the Applicant for the cost of works?

The parties further agreed that the written statement in relation to the Home appended at Pages 269-288 of the bundle, is silent as regards responsibility for the mobile home base; Mr Gale also confirmed to the Tribunal that the Respondent would not be taking any issue in regard to the statutory status of the mobile home, which he conceded was accepted.

10. Mr Harris made submissions in respect of the two matters for determination, saying that his Father, the Applicant had purchased the Home in December 2013, having had a survey carried out on it by PHS and which had not revealed subsidence. Mr Harris said that the Applicant had paid £71,000 for the Home, of which he said that Mr Barney received 10%. Mr Harris said that there had been heavy rain during the period from December 2013 to May 2014 and that in April / May 2014, it was noticed that the conservatory was starting to move away from the main structure of the mobile home; he said that the conservatory was partly built on the main base, and partly on land rented from Mr Barney. Mr Harris submitted that subsidence was suspected to be the problem, owing to surface water drainage issues including, he said, a lack of proper land drains. Mr Harris said that his Father had contacted Mr Barney during 2014 about the problem, and that he had also spoken with Mr Eric Halford, the site manager. Mr Harris said that the Respondent had indicated that any problem was not his, but that of the previous Home owner. Mr Harris said that in August 2014, the Applicant's insurer, the Zurich, had indicated via loss adjusters Cunningham & Lindsey, that the damage to the conservatory was likely to have been caused by consolidation subsidence. Mr Harris said that the Applicant had contacted Mr Barney who had told him that it was not appropriate to speculate, but who sought a report from Rund Surveyors in April 2015. Mr Harris submitted that the situation had only worsened as a result of the Respondent's inaction. Mr Gale asked whether the Applicant's insurers had confirmed they would cover the risk; Mr Harris said that the insurers had so confirmed. Mr Gale asked if the damage is limited to the conservatory at the point of connection with the mobile home, and Mr Harris so confirmed. In regard to the internal doors, Mr Harris said that the kitchen door is catching, and he added that the two external conservatory doors will not lock.
11. In regard to the claim by the Applicant for compensation in relation to repair costs, Mr Harris said that his Father had spent £250.00 on materials to form drainage channels, but no receipts had been included in the bundle. Reference was made to the National Park Homes Residents' Association and the trial hole which the Applicant had dug at the rear of the Home. Mr Harris said that there was no evidence of hardcore underneath the concrete skirt exposed by the trial hole and that there should have been approximately 6" in depth of hardcore material laid underneath. It was acknowledged by Mr Harris that proximity of the Home to the relatively busy Winchester Road, causes shaking and vibration to the Home. Mr Gale had no questions.
12. Mr Gale called three witnesses, namely Mr Barney, Mrs Brown and Mr Broadhead, referring in each case to the formal statement of truth attaching to their witness statements in the bundle. Mr Gale did not call upon Mr Barney to give any further oral evidence. Mr Harris challenged the veracity of Mr Barney's statement on the basis, he said, that it contains certain untrue statements (Page 107 in the bundle) implying that Mr Harris had used his position as a police officer improperly; Mr Harris refuted any such possibility.

13. In regard to Mrs Brown`s witness statement, Mr Harris again suggested that not all the facts were correct; he said that the Applicant`s pitch had been flooded from Home No. 29, until Mrs Brown`s husband installed further drainage piping on their pitch. Mrs Brown, said that Home No. 25 had had a mains water leak which had resulted in the problem, but that she had not mentioned it in her statement as she had not thought it to be relevant. Mrs Brown also mentioned certain drainage or similar works lately being carried on at Fishers Pond although admitted she had no idea whether they may or may not be relevant to the present case.
14. Mr Gale referred to the report dated 20<sup>th</sup> October 2016, prepared by Mr Broadhead of DCB Surveyors, and included at Pages 247-268 of the bundle. Mr Broadhead confirmed his recommendation in paragraph 7.4 of his report, at Page 260 of the bundle, that the conservatory should be removed to prevent damage to the mobile home. Mr Broadhead gave evidence and submitted that a mobile home is a moveable structure, subject to thermal movement and that as such, some re-levelling would often be required; he added that if a permanent structure such as a UPVC conservatory was attached, then the movement within the mobile home structure may cause a problem. Mr Broadhead mentioned that the row of bricks adjacent to the timber hatch which he had pointed out during the inspection, adjoined the external concrete skirting, which he said was at a higher level, also referring to a newer section of concrete skirting visible by the steps leading to the conservatory. Mr Harris indicated to the Tribunal that he had installed the newer concrete skirting section, above the original concrete section which he said had dropped; Mr Harris said he had done this to obviate a water ponding problem near the foot of the steps.
15. In his closing, Mr Gale submitted that in order to find for the Applicant it would be necessary to establish an obligation on Mr Barney; Mr Gale said that the only obligation arose under paragraph 22(c) of Schedule 1 to the 1983 Act. Mr Gale said that Mr Barney accepts that he is responsible for repair of the main base on which the mobile home itself is stationed. Mr Gale said Mr Barney accepted there had been some consolidation subsidence, but that it appeared to have been historic, occurring prior to Mr Harris`s purchase in 2013. Mr Gale referred to the photographs appended to Mr Harris`s own survey at Page 222 of the bundle, which Mr Gale said helpfully showed that the crack was there and much the same as it is now, when Mr Harris purchased. Mr Gale referred to the Rund survey report at Page 238 of the bundle, and paragraph 3.2.2 on Page 244, which he said referred to screws fixed by Mr Harris to the retaining wall, which had indicated no visible further movement. Mr Gale submitted that the crack to the main mobile home base is benign and that nothing arises from it, and that there is no point in repairing it at present, given that the inconvenience to Mr Harris in carrying out repair would outweigh any benefit. Mr Gale said that the site owner had no general responsibility to repair the land, and that none of the reports clearly pins down the cause of the problems with the conservatory. Mr Gale said there could be many different possible causes, but that the damage is chiefly due to the conservatory being there, and that there was no evidence of any agreement for it to be there, or any record of permission for it. Accordingly Mr Gale said that Mr Barney should not in fairness be held responsible for damage to a structure which had been added by a predecessor occupier of the mobile home, without

consent and which by its very nature as a fixed structure, was susceptible to damage, arising from the effect of movement of the mobile home.

16. In his closing, Mr Harris said that most of the issues had arisen since purchase in 2013, that the crack was now longer and that the conservatory had in consequence been damaged. Mr Harris said that planning permission was not needed for the conservatory as he understood it, and that any issue of obtaining permission should have been a matter for his Father's predecessor, not his Father. Mr Harris said his Father had not built the conservatory and why should he take it down? Mr Harris said the conservatory is on a base which is subsiding and causing the problem. Mr Harris referred to the lack of hardcore under the concrete skirting which he said has compounded the problems. Mr Harris added that it was not fair for the Applicant to have to go through his own insurers to deal with issues which were not his fault.

### **CONSIDERATION**

17. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
18. The Tribunal notes that the conservatory was added separately, apparently by a predecessor of the Applicant, and that it is of a different structure to the mobile home itself, and relatively more rigid. The conservatory is located on a base which has also apparently been separately added; it is partly over the concrete skirt, but that appeared to be separate from, or peripheral to, the main concrete base which supports the mobile home itself. In regard to whether drainage or the effects of the passage of water under or around the Home may have caused the conservatory to subside, the Tribunal notes that no clearly conclusive survey or other technical evidence has been provided, regarding any such effect as alleged, upon the conservatory and/or its base. The Tribunal further notes that the Applicant's insurers on the face of it, appear willing to accept the risk in principle for the repair of the conservatory. The Tribunal considers it to be clear that the original rectangular base provides the support for the original mobile home, and that the Respondent is undoubtedly responsible for such base. However the conservatory and its base, erected partly over the peripheral concrete skirt, have evidently been added at a later date; the Tribunal also accepts that the UPVC structure of the conservatory structure, is likely to be more rigid than the more flexible structure of the mobile home. The Tribunal also noted that the paving slabs laid in the area between the concrete skirt and the retaining wall, adjacent to the conservatory, appeared to be relatively level and even and without any obvious sign of suffering from the effects of water erosion, or suggestive of dropping and/or unevenness.
19. In circumstances where the conservatory and its base appear to have been added by a predecessor occupier, without the consent of the site owner, the Tribunal does not consider that the site owner should subsequently become fixed with responsibility for repair either of the conservatory or its separate base. The occupier is liable under paragraph 21(d) of Schedule 1 of the 1983 Act, to maintain the pitch, including all fences and outbuildings belonging to or enjoyed with, it and the mobile home. On the basis of the evidence as presented, the Tribunal is unable to conclude with any degree of certainty, that the crack to the main mobile home base is the direct cause of the problems with the conservatory; on the face of it such cracking to the main base appears to be historic and not obviously significantly

worsening, or categorically contributing to the problems with the conservatory. Accordingly, and in the absence of any further unequivocal evidence, the Tribunal determines that the liability to repair the conservatory and its separate base lies with the Applicant. The Applicant may wish to pursue a claim further with his insurers in this regard. In regard to the Applicant's claim for compensation as to costs incurred for drainage works or for repairs to the conservatory, the Tribunal makes no order on the basis that (i) no clear or unequivocal evidence has been presented to establish that drainage or water passage has caused the problems to the conservatory and its base and (ii) that in principle the occupier is liable to maintain the conservatory.

20. We made our decisions accordingly.

Judge P J Barber

### **PERMISSION TO APPEAL**

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.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.
4. The application for permission to appeal must 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.