



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

**Case References** : **CAM/00MF/PHI/2019/0006**

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

**Park Home Addresses** : **1, 2, 3, 4, 5, 8, 10, 11, 15, 16, 18, 19,  
20, 21, 22, 23, 27, 30, 31, 32, 34, 37,  
39, 40, 42, 43, 46, 48, 49 and 50 Mere Oak**

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

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

**Date of Application** : **29<sup>th</sup> April 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** : **23<sup>rd</sup> September 2019**

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**DECISION**

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## **Decision**

1. The Tribunal determines that the Service Charge is reasonable and payable for the year in issue as follows:

Water Mains Work	£686.41
Fencing	£1,103.95
New Car Parking	£1,002.66
New Office	£10,645.00
Site Electricity	£483.76
Office Electricity	£152.80
Garden Maintenance	£4,162.92
Office	£31,857.00
Postage	£50.00
<b>Total</b>	<b>£50,144.50</b>

## **Reasons**

### **Background**

2. An Application was made on 29<sup>th</sup> April 2019 by the Park Home Occupiers listed in the Application for a determination of a question arising under the Mobile Homes Act 1983 or an agreement to which it relates under section 4 of the Mobile Homes Act 1983 as amended, for the following:

A) to set a timescale for carrying out and completing the work on:

- i. re-instating the gardens and erecting fences following the laying of the water mains,
- ii. laying new car parks and
- iii. placement of offices and removal of unit in a car park

B) to determine the water charge for year 2018 to 2019 and set a time by which the Occupiers should be informed of the respective water charge and service charge.

C) to determine is whether certain items should be included in the Service Charge for the year 2019 to 2020 and what a reasonable charge should be for items specified by the Applicants.

### **The Issues**

3. The Tribunal is not able to order when work should be carried out and therefore the first issue set out above at paragraph 2, A) is not within its jurisdiction. Any issue in relation to the condition of the site may be a matter to be considered in respect of a future pitch fee
4. Therefore, the issues for the Tribunal are limited to those arising from B) the water charge for the year 2018 to 2019 and C) the service charge (including the water charge) for the year 2019 to 2020.

5. The Tribunal subsequently received an Application on 12<sup>th</sup> June 2019, Case Reference: CAM/ooMF/PHI/2019/0010, from the Respondent Site Owner as Applicant, to determine the water charge for years 2<sup>nd</sup> March 2016 and 10<sup>th</sup> March 2019.
6. The Procedural Judge found that the two cases could be heard together and this happened on 5<sup>th</sup> September 2019.
7. Having heard the two cases the Tribunal found that the issue B) in both Applications regarding the cost of water, which had been an item in the Service Charge, was 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. The Site Owner's 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.
8. **The Decision in respect of the Application by the Site Owner case reference: CAM/ooMF/PHI/2019/0010 will apply to the issue of the water charges with regard to this Application by the Occupiers. This issue is therefore not dealt with in this Decision.**
9. The Tribunal issued Directions on 3<sup>rd</sup> June 2019 on the understanding that the Applicants' Representative had provided the Respondent with a copy of the Application, Statement of case and Supporting Documents. The Respondent's Representative had not received a copy of these documents and therefore the Directions were re-issued with a requirement that a copy of the aforementioned documents is provided to the Respondent's Representative and the timescale for compliance was amended accordingly.

### **The Inspection**

10. The Tribunal did not inspect the Site but has done so on a previous occasion and so was able to interpret the plans and photographs provided.

### **The Law**

11. 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.
12. Paragraph 1(g) of the Express Terms of the Written Agreement defines the Service Charge as follows:

*"Service Charge" means a proportioned payment of the general costs of running and maintenance of the Park including the roads garages paths*

*gardens fences and public areas drains electricity water and other service insurance and charges for electricity and water supplied to the Mobile Home Park (but not to the individually occupied Mobile Homes) and the reasonable salary of any site warden such sums to be determined or estimated annually by the Owner's Accountant whose decision shall be final and binding. Provided that where the owner seeks to rely on estimates provided by the Owner's accountant then there should be appropriate adjustment during the following year when the exact costs are ascertained. The proportion payable by the Occupier shall be a fraction of the whole calculated by dividing the number of weeks the Occupier's mobile home has been on the mobile home park in the year in question by a figure arrived at by adding together a similar calculation for each mobile home (including the Occupier's mobile home) that has been on the mobile home park during the year."*

13. The relevant extract from the Licence is as follows:  
*Parking*

12. *Suitably hard surfaced parking places shall be provided, with space for at least one car for each caravan or mobile home standing and additionally where possible one visitor's parking space for each caravan or mobile home (or where possible two spaces for three caravans if such spaces are provided in suitably sited communal areas).*

### **The Hearing**

14. A hearing was held on the 5<sup>th</sup> September 2019 which was attended by Mrs Hazel Kelston-Merrett, Secretary of the Mere oak Park Residents Association and Mr Alan Savory of the Independent Park Home Advisory Service for the Applicants and Mr John Clements, Solicitor, and Miss Claire Barney, Joint Site Warden for the Respondents.
15. Also present were the Occupiers of Numbers 2, 5, 15, 18, 21, 22, 30, 32, 42, 43, 46, and 48.

### **Issues**

16. The Respondent does not produce a service charge account but a numbered list of all the 105 invoices included in the Service Charge together with copies of most of the invoices. Mrs Kelston Merritt on behalf of the Occupiers has then produced a spread sheet identifying those invoices which were agreed and those invoices that were questioned by the Occupiers and classifying them under heads in columns which is particularly helpful.
17. It was apparent from the Bundle that Mrs Kelston Merritt and Miss Barney had had considerable correspondence and discussions and three versions of the spread sheet had been produced as agreement was reached and concessions made.

18. The third version of the Spread Sheet identified invoices which were in issue for the Tribunal at the hearing and fell into the following headings:
  - 1) New Car Parking
  - 2) Water Mains Work
  - 3) Fencing
  - 4) Gas & Electricity Charges
  - 5) Sage Computer System
  - 6) New Site Offices
  - 7) Bedding Plants
  - 8) Fire Safety Training
  - 9) Salaries
  - 10) Emergency Phone Top Up
  - 11) Postage
  - 12) Miscellaneous Item
19. The Tribunal took account of the written and oral evidence adduced on each of the items still in issue at the hearing and made its determination accordingly.

### **Preliminary Note re Site/Park Boundary**

20. There has been some uncertainty at each of the previous tribunal hearings as to whether the car parking area at the front/south side of MereOak Park (the Park) is part of the Park at all, and what the status of the area beyond is in relation to the Park. At those hearings the extent of the Park was not in issue.
21. In the present case there is an issue as to whether the land upon which the old office (the Old Office) was situated is part of the Park. The Tribunal was provided with a plan at page 179 of the Bundle which it is understood is that held by the Local Authority and upon which the Site Licence is granted. This plan shows clearly that the boundary at the front/south side of the Park follows the line of the front of the car parking area where it meets the road. From the knowledge of the Tribunal's members having inspected the Park on two previous occasions and the photographs provided, the site of the Old Office was beyond the boundary of the Park as delineated in the plan provided.

### **Evidence and Determinations**

#### ***1) New Car Park***

22. In November 2018 the Occupiers were sent a consultation document regarding the installation of several new parking spaces on the Park. It was stated that an additional 14 parking spaces would be provided giving the Occupiers 10 more parking spaces. The document stated that it would cost £11,289.50. All the Occupiers objected to the installation of the car parking spaces. A lower quotation was obtained of £5,500 but the Occupiers still rejected the proposal.
23. According to the plan annexed to the consultation document there were to be 6 spaces adjacent to Number 13, 8 parking spaces on the concrete apron bounded by Numbers 33, 53, 54A and B and Numbers 13 and 14.

24. The Applicants submitted that there were only 4 spaces adjacent to Number 13 because the cars had to be parked at an angle so as not to intrude into the access road. The spaces situated on the apron adjacent to Numbers 52, 53, 54A and 54B are for the use of those homes and are a requirement of the licence and should have been created in 2010 when they were placed in the middle of the Park. The two spaces marked on the plan between Numbers 13 and 14 are not feasible as the area of concrete laid is insufficient to accommodate two cars without obstructing the other parking spaces on the apron. Photographs were produced to illustrate the point. Therefore, the plan only really allows for 10 spaces and four of these are for Numbers 52, 53, 54A and 54B. Therefore, the proposed plans only provided for 6 visitor spaces.
25. Before Numbers 52, 53, 54A and 54B were placed on the Park there were 11 visitor parking spaces. A new office unit has been placed in the car park at the front of the Park. The unit and decking protrude into the car park by 3.4 metres and the walkway adds another 0.8 metres equalling 4.5 metres which corresponds to 2 car parking spaces reducing the number of visitor spaces to 9. Therefore, adding the 6 visitor spaces created by the proposal, the number of visitor spaces has only increased by 4 parking spaces.
26. The Applicants therefore object to the cost of creating the new car parking spaces (the New Car Park) being on the Service Charge because:
  1. It has been made very clear via the consultation process that the Occupiers are not prepared to pay for this work.
  2. That the car parking problem is of the Site Owner's own making in that they failed to create spaces for Numbers 52, 53, 54A and 54B when they were placed in the middle of the Park and the office unit takes up 2 of the existing visitor spaces.
  3. According to the licence there should be at least 2 visitor spaces for every 3 park homes. There are 55 homes so there should be 26 extra spaces.
  4. The Senior Environmental Health Officer agrees that the provision of the car parking is the site owner's development and not maintenance.
27. Mrs Kelston-Merritt also submitted that the Respondent would have to have laid the concrete apron in any event in order to provide the 4 spaces for Numbers 52, 53, 54A and 54B, which were an expansion of the Park. The addition of this cost to the Service Charge was a means of expanding the Park at the expense of the Occupiers.
28. Mr Savory added that even if the Tribunal did not agree that the provision of the car parking was a development cost which the Site Owner alone should bear, it should pay a significant proportion.
29. Mr Clements said that the Respondent did not accept that the car parking spaces provided were not viable. He said that the provision of the car parking spaces was within Paragraph 1(g) of the Express Terms of the Written Agreement in that it was part of *the general costs of running and maintenance of the Park including the roads*. He suggested that "roads" could be taken to include parking.

30. Mr Clement said that the additional spaces were not an improvement to the Park for which payment was looked for through the pitch fee. To that extent the consultation had not been required. It was part of running and maintaining the Park.
31. He said that if the Tribunal took the view that there had a been a reduction in the number of car parking spaces at the front of the Park by the siting of the office unit then the Site Owner could not be said to have developed the Park but only moved the spaces to another part of the Park. With regard to the Environmental Health Officer's email he said that on site she had seemed to indicate that the additional spaces were not development but her email seems to say otherwise. He submitted that reliance could not be placed upon the emails as it did not say that the parking was not development.

#### *Tribunal's Determination*

32. The Tribunal considered whether the New Car Park came within Paragraph 1(g) of the Express Terms of the Written Agreement in that it was part of *the general costs of running and maintenance of the Park including the roads*.
33. Firstly, the Tribunal did not agree that "roads" included parking but the list in the Paragraph is not exhaustive and therefore car parking spaces are not excluded.
34. Secondly the Tribunal considered what amounted to *running and maintenance of the Park*. The Tribunal is of the opinion that the cost of "running" means the cost of administering. In the past under this heading the Tribunal has accepted the use and related costs of an office, the related costs of the wardens (but not the warden's salary which is referred to specifically in the Paragraph), CCTV for the protection of the site, a computer and its related costs for the site alone. The Tribunal is of the opinion that the cost of "maintenance" means the cost of landscaping, repair, replacement, reinstatement etc.
35. "Maintenance" does not include "improvements" in the context of Paragraph 1(g). The Site Owner may improve the site and obtain recompense through the pitch fee, provided there is compliance with the specific statutory provisions implied in the Written Agreement. Whereas case law supports the view that a repair or replacement may also amount to an improvement, nevertheless there must be the presence of disrepair in the first place.
36. Neither "running" nor "maintenance" includes "development" such as adding homes or facilities to the Park.
37. With this in mind the Tribunal found that the provision of parking spaces for Numbers 52, 53, 54A and 54B were part of the development of the Park. They were a necessary extension to the siting of the new homes. Therefore, these parking spaces are not chargeable to the Service Charge.

38. The Tribunal also found that additional visitor spaces were an improvement and a development of the site. As an improvement, the proper recompense for this work would be through the pitch fee following compliance with the requisite provisions, which had not been done. Mr Clement had made it clear that the consultation that had taken place was not for that purpose. The spaces are development because they add a facility to the Park to further meet the standards wished for by the licence and making the Park more attractive to prospective Occupiers.
39. In respect of the Environmental Health Officer's email she appears to take the view that the parking spaces for Numbers 52, 53, 54A and 54B are an extension of their having been placed on the Park but expresses no view as to the status of the visitor parking spaces other than to observe that 2 to 3 are no longer available at the front/south side of the Park due to the siting of the New Office.
40. The Tribunal was of the opinion that only the cost of the car park spaces that had been lost and re-sited from the existing car park at the front/south side of the Park to form part of the new car parking at the centre of the Park were chargeable to the Service Charge. The Tribunal found from the evidence adduced that two of the spaces had been re-sited.
41. In calculating the cost of these spaces, the Tribunal determined how many new spaces had been created. The Respondent had submitted that altogether there were 14 spaces relating to the New Car Park. However, 4 of these were for Numbers 52, 53, 54A and 54B. The Tribunal found from the photographs that the two spaces marked on the plan between Numbers 13 and 14 are not feasible as the area of concrete laid is insufficient to accommodate two cars without obstructing the other parking spaces on the apron. The concrete does not go as far back between Numbers 13 and 14 as the plan indicates. Therefore, these 2 spaces were discounted.
42. The Tribunal did not agree that only 4 vehicles parked in chevron formation could be accommodated in the parking area adjacent to Number 13. From the photograph it was apparent from the number of fence panels that the space was approximately 14 metres long and so it was wide enough for 6 vehicles if parked square with the fence. Vehicles vary a good deal in length and it may well be that some would protrude slightly into the road but many would not. It did not appear that the area was generally not wide enough for vehicles to be parked square to the fence.
43. The Tribunal therefore found that deducting the 4 spaces for Numbers 52, 53, 54A and 54B and the 2 spaces between Number 13 and 14, there are 8 visitor spaces as a result of the recent works. Of these, 6 are new and 2 have been re-sited from the front/south side of the Park and are chargeable to the Service Charge.



44. The total cost of the recent works is:

Invoice	Company	Date	Description	Amount
58	Geopoint	11/01/18	Survey for new parking	£420.00
65	Evarav	28/02/18	Car park & hardstanding installation	£5,500.00
74	Rick Maslin	18/09/18	Ballast	£96.00
<b>Total</b>				<b>£6,016.00</b>

45. The total number of spaces constructed is 12 and therefore the cost of each space is £6,016.00 ÷ 12 = £501.33. Two spaces costs £1,002.66 which the Tribunal determines to be a reasonable sum to be charged to the Service Charge for this item.

### **2) Water Mains**

46. The Applicants had understood that the charges for renewing the water mains were all included in the previous years' service charge. They had therefore questioned the inclusion in the current year of a further charge. However, as it was noted as being the "Last water payment", the Occupiers said they would accept the charge on the understanding that it was indeed the last.

47. The Applicant further commented that the cost of re-instating was part of the original contract with Berks 24/7. The re-instatement work has not been completed and it appeared clear that this will have to be done by another contractor. The Applicants submitted that it was the Site Owner's responsibility to ensure that the contract was completed before paying the final bill. Therefore, they did not believe it reasonable to expect the occupiers to pay for the re-instatement in the future.

### *Tribunal's Determination*

48. The Tribunal made no determination as there was no outstanding demand and no evidence adduced with regard to the contract as to the extent of the work to be carried out.

### **3) Fencing**

49. The background to the charge is that during the laying of the water mains along the fence line at the rear of Numbers 1 to 11 the contractor found that due to the leaks from the old main the ground around the fence had become water logged causing the supports to be unstable and the fence panels to rot. In the course of excavation, the fence began to collapse and a new fence had to be installed. Fence panels were purchased at a charge of £1,500.00 (invoice 56 on page 418 of the Bundle). However, in the course of re-erecting the fence it was found that the ground level of Mere oak Park was lower than the level of the roadway serving the neighbouring park, which had contributed to the original fence rotting. Therefore, the fence panels purchased were unsuitable for this stretch of the boundary. However, it was anticipated they would be

suitable for the boundary at the rear of Numbers 11 to 35 and the front of Mere oak Park at the rear of Numbers 21 to 24 where the fence panels had deteriorated and were due to be replaced.

50. The fence at the rear of Numbers 1 to 11 required concrete gravel boards to retain the roadway which was above the ground level of Mere oak Park and concrete posts as timber posts would rot. to remedy the risk of rot. Fences of two different sizes (11830 x 1830 and 1500 x 1830) were required to account for the rise in ground level from Number 1 to Number 11. The invoice of £7,800.00 for these items had been paid in the previous year's service charge and was provided in the Bundle at page 301.
51. The work on replacing the boundary fence at the rear of Numbers 11 to 35 and the front of Mere oak Park at the rear of Numbers 21 to 24 was due to be carried out this year and therefore the invoice of £1,500.00 for these panels was included in this year. In the event the contractor who had purchased them was in financial difficulties and unable to complete the work.
52. The panels purchased by the contractor were no longer on the Park because they had been removed together with other building materials, as the Occupiers complained because they found the stacked materials unsightly and they wanted the Park re-instated.
53. The Applicants therefore objected to paying for the panels for the following reasons.
  - a) The work had not been completed in that the boundary fences at the rear of 11 to 35 and 21 to 24 had not, at least to date, been replaced with the fence panels purchased by the invoice of £1,500.00.
  - b) It was the contractor's responsibility to purchase the correct materials, if incorrect materials were purchased the client could not be expected to pay for the error.
  - c) It was the Site Owner's responsibility to ensure that the work contracted for was carried out, if the Site Owner had paid the contractor for materials which were taken away and not used then it was for the Site Owner to obtain reimbursement. The Occupiers should not have to pay for a service they had not received.
54. Mr Clements said that the Respondent would withdraw the invoice and demand from this year as the work had not been completed.

#### *Tribunal's Determination*

55. The Tribunal made no determination as withdrawal of the Invoice 56 dated 7<sup>th</sup> January 2019 for fencing supplies of £1,500.00 meant there was no issue to be considered for the current service charge year.

#### 4) Gas & Electricity Charges

56. The Applicants objected to the energy costs being charged for Number 53 which was Miss Anne Barney's home but part had also been used as an office until the New Office was obtained. It appeared that 100% of the bills had been included when Miss Barney still occupied Number 53 when the previous Tribunal said that 30% of such costs would be reasonable to cover the use of the home as the office.
57. In oral evidence Miss Claire Barney said that her sister had moved out of Number 53 by 1<sup>st</sup> July 2018. Number 53 was then rented out and no longer used as the office. It was agreed that those bills prior to that date should be charged to the Service Charge at a third.
58. The following invoices were identified from Mrs Kelston-Merritt's spread sheet and charged at a third. The way in which the spread sheet identified the items caused some difficulty at the hearing and, on the costs that were identified at the time, it appeared the total came to £141.52. In writing its determination the Tribunal finds that there is a small difference between that calculation and the one it has made subsequently. The Tribunal believes its analysis below is the more accurate:

Invoice	Item	Date	Amount	1/3 to Service Charge
5	Gas	05/04/2018	£193.40	£64.47
13	Gas	17/05/2018	£55.00	£18.33
26	Gas	04/06/2018	£55.00	£18.33
<i>Sub Total</i>			<i>£303.40</i>	<i>£101.13</i>
75	Electricity	06/04/2018	£20.00	£6.66
76	Electricity	06/04/2018	£30.00	£10.00
80	Electricity	17/05/2018	£10.00	£3.33
82	Electricity	14/05/2018	£30.00	£10.00
94	Electricity	12/06/2018	£20.00	£6.67
95	Electricity	31/05/2018	£45.00	£15.00
<i>Sub Total</i>			<i>£155.00</i>	<i>£51.67</i>
<b>Total</b>			<b>£458.40</b>	<b>£152.80</b>

#### *Tribunal's Determination*

59. The Tribunal determined that the reasonable cost of the gas and electricity for the use of Number 53 as an office is £152.80. This is one third of the total invoices of £458.40 for the Service Charge period while Number 53 was used as an office and was also the home of Miss Anne Barney.
60. The Tribunal noted that there were three types of invoice from SSE. Invoices 4 and 28 (£78.90 + £43.16 = £122.06) were for the car park supply and Invoices 29 and 46 + 51 (£76.19 + £58.92 + £78.73 = £213.84) for the supply to the sewerage pump in the Gas and Electricity column of the Spread Sheet. Whereas Invoices 43, 52 and 57 (£43.93 + £45.20 + 58.73 = £147.86) were described as being the Office Supply and placed in the Office column. These

latter three are not in dispute and are presumably for the electrical supply to the CCTV etc. The Tribunal considered they were better placed in the Gas and Electricity column for clarity in identifying what is to be paid in the Service Charge.

### **5) Sage**

61. The Applicants said that the company had up graded the system on the advice of the company supplying it. It was submitted that, firstly, it was unnecessary to upgrade the system and secondly the advice of the supplying company was not independent or impartial and such advice should have been obtained.
62. In addition, it was noted that in the past the cost had been £12.00 a month and now it appeared to be £98.40 per month which, it was submitted, was excessive for a modest demand with only two persons on the payroll. Mrs Kelston-Merritt said that she had been on the Sage site where an “up to 5 persons on a payroll” system was available for £14.00 plus VAT. Mrs Kelston-Merritt provided a screen shot.
63. Miss Barney said in oral evidence that when she had contacted Sage to renew the contract, she was informed that due to new legal requirements coming into effect the existing package was out of date and would need to be up dated. She contacted the Respondent’s Accountant who recommended that she update as advised by Sage.
64. In the course of discussion, it became apparent that the previous package had been purchased ‘outright’ with a single payment, which has until now been common. However, these packages require updating and this has been done by subscribing for a modest monthly sum, in the instance about £12.00, to Sage Cloud. However, these ‘outright purchase’ packages are no longer supported by the subscription updates. The alternative, although for many there is little choice if they are to be kept up to date, is to purchase an online package in respect of which there is no ‘outright’ payment but an on-going monthly subscription. The advantage of such systems is that they are always up dated. The disadvantage is that the user only has access while they pay the subscription. Reference was made to the Microsoft 360 package as being a similar system, which several of those at the hearing had come across.
65. With regard to the need to be up to date to meet legal requirements it was noted that VAT and in due course payroll taxation was being digitalised which meant that an up to date system was required in order to submit the necessary tax returns on line.
66. With regard to the cost it was found on further examination that Mrs Kelston-Merritt’s belief that a system could be obtained for £14.00 plus VAT a month was understandable but was really a marketing ploy. The amount quoted was an introductory 50% reduction for a restricted time. From the knowledge and experience of the Tribunal members there were probably a number of features which would need to be purchased in addition and the price quoted was probably per employee which in this case is two.

### *Tribunal's Decision*

67. The Tribunal found the following invoices in issue:

Invoice	Company	Date	Description	Amount
45	Sage	16/10/18	Monthly fee	£101.68
50	Sage	16/12/19	Monthly fee	£98.40
59	Sage	16/01/19	Monthly fee	£98.40
64	Sage	16/03/19	Monthly fee	£98.40
67	Sage	01/03/19	Monthly fee	£98.40
<b>Total</b>				<b>£495.28</b>

68. The Tribunal found from its knowledge and experience that in the light of digitalisation of tax the advice by Sage to up date was appropriate. In addition, the recommendation by the accountant to upgrade the system as has been done, was sound. The Tribunal therefore determined that the monthly subscription to Sage was reasonable.

### **6) New “Offices”**

69. The Applicants objected to the cost of the New Office and the cost of siting it. They questioned whether it should be included in the Service Charge at all. They felt aggrieved that the New Office was still not ‘up and running’ 10 months after having been brought on site. If it is a legitimate item the following costs were questioned:

Invoice	Company	Date	Description	Amount
42	DTM Clearance	04/09/18	Removal of Old Office	£2,115.00
44	Mary Cullen	29/09/18	Purchase of New Office	£150.00
47	Portable Building Supplies	18/09/18	New Office	£11,170.00
54	Berk 24/7	11/12/18	Materials & labour	£4,057.70
<b>Total</b>				<b>£17,492.70</b>

70. In written representations the Applicants made the following points:
71. Invoice 42 from DTM Clearance for removal of the Old Office includes the delivery of 15 tons of Type 1 Scalps at a cost of £600. Type 1 scalps is sized from large down to dust and is normally used as a bulk fill, a material for levelling and as a sub-base for paths, drives, patios, sheds and building jobs. These were laid under and around the other unit purchased by the Respondent (the Respondent’s Unit) placed on the site of the Old Office. The Applicants said that these looked a mess and were not prepared to pay for them.

72. Invoice 44 from Mary Cullen was for a person to source and purchase the New Office. The Applicants said that this task is within the remit of the wardens and did not need to be outsourced.
73. Invoice 47 included a number of items, of these the Applicants objected to the following:
- a) The installation of a new water heater which held 15 litres rather than the existing heater which held 10 litres was considered unnecessary. It was suggested that a small heater with a tap at £50 would have been sufficient.
  - b) The cost of window guards was considered unnecessary because the previous office had not had its windows broken although left empty all the time.
  - c) The discount of £50.00 on the invoice has been added instead of being deducted.
  - d) The total VAT on both the two units that had been purchased at the same time had all been charged to the Service Charge in error.
74. Invoice 54 from Berks 24/7 was for plumbing and soil work (£657.50) and labour (£687.00), electrical work (£398.20) and labour (£200.00), closing the under area materials (£920.00) and labour (£450.00), decking materials (£1,640.00) and labour (£840.00) and compactor (£190.00) totalling £4,057.70.
75. The Applicants considered that only half the cost of certain items of this latter invoice should be charged as work such as closing the under area and the decking are to be carried out on both units. It was said that until the decking work is done the New Office is inaccessible by Occupiers even if it was operational.
76. The Respondent stated in written representations that two new units had been purchased. One was a new site office (the New Office) for Occupiers to meet with the site wardens and replaces the old office which had over time fallen into such a condition that it was unsafe. This New Office is sited on the car park at the entrance to the Park.
77. The need for such an office does not appear to be disputed by the Applicants only the ability to be able to charge it to the Service Charge. It was submitted that the cost of the New Office was part of the general running and maintenance of the Park and therefore chargeable to the Service Charge. The New Office comprises a meeting room, office, kitchen and toilet facilities.
78. The other unit (Respondent's unit) is for the personal use of Anne and Claire Barney and is situated in the same position as the Old Office. This unit is not charged to the Service Charge and is therefore not considered in respect of this determination.

79. The Respondent did not deny that the New Office was not yet in operation.

*Tribunal's Determination*

80. The Tribunal found that the New Office was a replacement for the Old Office and as such was part of the general running and maintenance of the Park and therefore chargeable to the Service Charge.

81. The Tribunal considered each invoice in relation to the New Office as follows.

Invoice 42 from DTM Clearance for removal of the Old Office

82. The Tribunal found that the removal of the old office would be part of the maintenance of the Park provided the old office was on the Park. Therefore, the cost of its removal would be part of the Service Charge.

83. However, the Tribunal found from its knowledge of the site, photographs 8, 9 and 10 on pages 268 and 269 and the plan provided at page 170 of the Bundle, that the Old Office was not on the Park but on an area of land immediately adjacent to the Park. Therefore, its removal was not part of running and maintaining the Park.

84. Also, the Tribunal found from its knowledge of the site, the photographs at pages 268 and 269 and the plan provided at page 170 of the Bundle that the laying of the type 1 scalps was as a foundation for the Site Owner's unit on the site of the Old Office and not for the maintenance of the Park. They were used in connection with the Site Owner's private office which was sited adjacent not on the Park. The New Office being on the car park, no scalps were required. Therefore, they were not used for the running and maintenance of the Park. The Tribunal determined that the £600 for the scalps is not chargeable to the Service Charge.

Invoice 44 from Mary Cullen to source and purchase the New office

85. The Tribunal considered that the Occupiers were liable to pay for the office itself as maintenance, as it replaced the previous office, but questioned the payment to Ms Cullen in this regard.

86. The email to Ms Cullen refers to a payment "of £200.00 for both the work with the annexe and ... time with the offices". Yet the undated payment to Ms Cullen is for £150.00. The Tribunal found that Ms Cullen was not exclusively purchasing a suitable office unit for Mere oak Park but undertaking other work for the Respondent as well. The Tribunal determined that the £150.00 was a cost incurred for business expenses in sourcing units for and not chargeable to the Service Charge.

Invoice 47 for the Replacement Office

87. The Tribunal did not agree that the larger water heater was unnecessary. In knowledge and experience of the members of the Tribunal 15 litres is a reasonable sized tank which should be able to supply hot water to both toilet and kitchen at the same time. There is a risk that the flow from a smaller tank might be insufficient and cause the heater element to ‘cut out’ or be damaged.
88. The Tribunal did not agree that the window guards were unnecessary. The office would house the computer which has an intrinsic value and also would contain personal details of the Occupiers, which, notwithstanding passwords, might be at risk were the computer stolen. Not having had burglaries in the past does not guarantee immunity from them in the future. Although not a complete protection nevertheless the guards are at least a substantial deterrent.
89. The Tribunal determined the following costs reasonable:
- |                                       |                  |
|---------------------------------------|------------------|
| Jackleg cabin                         | £4,500.00        |
| Transportation of the unit to Reading | £1,150.00        |
| Toilet                                | £1,925.00        |
| Water Heater up grade                 | £325.00          |
| Window Guards                         | <u>£450.00</u>   |
| Sub Total                             | £8,350.00        |
| Less Discount                         | <u>- £50.00</u>  |
| Sub Total                             | £8,300.00        |
| VAT @ 20%                             | <u>£1,660.00</u> |
| Total                                 | £9,960.00        |
90. The Tribunal found that as the New Office was in place and could not be commissioned unless it was in situ, its cost was payable in the current years’ Service Charge.

Invoice 54 from Berks 24/7

91. It appears that the Invoice to Berks 24/7 was for commissioning both the two new units, and not just the New Office.
92. It is clear from the photographs provided that the under areas of both the Respondent’s office and the New Office have been closed. Therefore, half the cost of the materials and labour for this work should be charged to the Service Charge i.e.
- |                                    |                         |
|------------------------------------|-------------------------|
| Materials                          | £920.00 @ 50% = £460.00 |
| Labour                             | £450.00 @ 50% = £225.00 |
| Total attributed to Service Charge | £685.00                 |
93. From the specifications on page 402 of the Bundle both the Respondent’s Unit and the New Office have electrical connections. Therefore, half the cost of the materials and labour for this work is chargeable to the Service Charge i.e.
- |                                    |                         |
|------------------------------------|-------------------------|
| Materials                          | £398.00 @ 50% = £199.00 |
| Labour                             | £200.00 @ 50% = £100.00 |
| Total attributed to Service Charge | £299.00                 |



94. Only the New Office has a toilet and plumbing therefore all of this work is chargeable to the Service Charge i.e.  
 Materials = £657.56  
 Labour = £687.00  
 Total attributed to Service Charge £1,344.66
95. On the basis that both the Respondent's Unit and the New Office will require decking to provide access to their respective units, half the invoice cost of the materials and labour for this work is chargeable to the Service Charge i.e.  
 Materials £398.00 @ 50% = £199.00  
 Labour £200.00 @ 50% = £100.00  
 Total attributed to Service Charge £299.00
96. However, the Tribunal found that of all the items on the Invoice only the closing of the under area had been carried out. It determined that its cost was payable in the current years' Service Charge.
97. In the absence of evidence to the contrary the Tribunal accepted the Applicants' statement that the decking had not been laid and although there was no evidence to show that the plumbing and electrical connection work had or had not been carried out without access, the office had not been commissioned and was not operative.
98. The Tribunal determined that until the New Office was commissioned and operational the costs referred to in Invoice 54 from Berks 24/7 were not payable except that carried out in covering the under area.
99. The Tribunal therefore determines the following costs are chargeable to the Service Charge for the year in issue:

Invoice	Company	Date	Description	Amount
42	DTM Clearance	04/09/18	Removal of old office	£0
44	Mary Cullen	29/09/18	Purchase of new units	£0
47	Portable Building Supplies	18/09/18	New Office	£9,960.00
54	Berk 24/7	11/12/18	Materials & labour	£685.00
<b>Total</b>				<b>£10,645.00</b>

### **7) Bedding Plants**

100. The Applicants objected to being charged for bedding plants which had been placed along the communal pathway between 28, 29, 54A & B and 52. Although this is meant to be a communal area it is used solely by Number 52, 53, 54A & 54B which are rental units. As the plants are of little or no benefit to Occupiers generally, they did not see why they should pay for them.
101. Miss Barney said that it was an area of land that had to either be turfed or made into a flower bed. Either way it would require some maintenance. The Occupier of a nearby home had said that she would look after it.

### *Tribunal's Decision*

102. The Tribunal found the communal areas were laid to lawn or shrubs or trees which were relatively easily maintained. A flower bed did not meet with the general character of the communal parts. Flower beds require a different level of maintenance to that of lawns or shrubs or trees. The community spirited Occupier could not be made responsible for the maintenance of the bed. If for any reason she was not able to look after it, the bed would have to be maintained at a cost to the Service Charge.
103. Whereas the Tribunal could see no objection to the Site Owner planting and maintaining a flower bed at its own expense, turfing or planting a shrub in the area was more in character with the communal areas of the Park.
104. Therefore, the Tribunal determined it was not reasonable for the cost of Invoice 85 for £97.40 and Invoice 89 for £63.20 and Invoice 91 for £10.60 totalling £171.20 for bedding plants to be charged to the Service Charge.

### **8) Fire Safety**

105. The Applicants objected to the item of fire safety staff training because they submit that it is not part of the maintenance and running of the Park but a business expense. The Respondent replied by stating that regular fire safety training forms part of the role of the site warden and that the cost of training (Invoice 88 for £30.00) is not unreasonable.

### *Tribunal's Determination*

106. The Tribunal finds the cost of the training is not unreasonable. However, it is for the Respondent to provide fully trained site wardens, particularly at the level of salary charged. It is not for the Occupiers to ensure that the wardens are fully trained. The Tribunal therefore determined that this is a business expense payable by the Respondent.

### **9) Salaries**

107. The Applicants objected to an increase of 3% in the salaries of the joint Park Wardens proposed by the Respondent. It was submitted that the Occupiers do not receive value for money from the Park Wardens.
108. In particular it was said that they fail to carry out the duties they set out as their job description in a Tribunal in June 2016 listed as follows:
  - Collect pitch fees and service charges and chase up non-payment (no bookkeeping or accountancy is undertaken as this is contracted out,
  - Read water meters,
  - Check boundary fences and maintenance work and call contractors as necessary,
  - Meet and instruct contractors for maintenance, landscaping and grounds e.g. mowing and tree pruning,

- Dispose of rubbish,
  - Meet council officers, fire officers and deal with notices,
  - Deal with parking issues, complaints and breaches of agreement,
  - Deal with call outs such as water leaks.
109. The following points were made:
- a) The wardens took 5 months to inform Occupiers of the effect of the tribunal decision in 2018.
  - b) Although a surface water payment reduction was negotiated, action was not taken to ensure it was applied in the following year.
  - c) There were continual problems with contractors in the course of the laying of the new water mains which should have been foreseen or dealt with more effectively by the wardens as managers. A number of these incidents were described and it was said that the work was still not complete.
  - d) Prompt action was not taken when the local authority required the unit in the car park to be removed.
  - e) The Wardens have failed to respond to emergency calls when they receive an additional £1.50 per hour to provide 24/7 call out. Many of the Occupiers are retired and vulnerable and need the additional support. One Occupier complained that it took 4 days to contact the Warden and was told she was on holiday.
110. The Applicants referred to Tudor Rose Park which it was submitted provides a more cost-effective service with a Warden present 9.00 to 14.00 Monday to Thursday. The Applicants submitted that there was a lack of accountability by the Wardens to the Occupiers who pay their wages. It was suggested that the number of hours be reduced to 28 per week from the current 35.
111. The Respondent stated that the Wardens' duties and salaries have not changed since 2016 when the tribunal determined that the full-time warden's salary should be £26,325.00 per annum. The proposed increase of 3% is based on figures which show the average wage growth in the UK in June 2019 is running at 3.1%. The increased salary is £27,114,75.
112. In relation to the specific issue raised it was submitted that the office opening hours are irrelevant and the responsibilities of the Warden involve more than working in the office. Both the wardens are contactable whenever the site office is closed and all Occupiers have access to their phone numbers. In respect of the emergency calls which it was said were not answered promptly or appropriately one was where the Occupier's plumber was not able to locate the stop cock, which it was felt the contractor should have been able to do and the other was an issue with the boiler which was the responsibility of the Occupier not the Park.

### *Tribunal's Decision*

113. The Tribunal appreciated that the Park had had a difficult 2017/2018 due to the re-laying of the water main. The members of this tribunal were also the tribunal which was asked to address specific cost issues with regard to the works and recall that the significant difficulties encountered by both the contractor and the Occupiers were generally dealt with competently by the Wardens, most particularly in ensuring Occupiers were provided with potable water.
114. The Tribunal is of the opinion that the issues with regard to the contractor would only have been avoided or mitigated at significantly greater expense by employing a contractor with a larger work force and a contract manager, many of the duties of whom were carried out by the Wardens.
115. The Tribunal did note that it was said with regard to the emergency phone that it was not reasonable for the warden to be available 24 hours a day, 7 days a week, 365 days a year. Although an individual warden may not personally have that availability, the additional £1.50 an hour does mean that the Respondent must provide cover if neither of the joint wardens are on hand.
116. If the Applicants really considered that the role of Warden requires review e.g. with regard to the number of hours or the emergency cover, then they will need to provide a case for any changes with supporting evidence. The Tribunal found that there was insufficient evidence in this instance for it to reconsider the tribunal decision of June 2016.
117. The Tribunal found that in the knowledge and experience of its members rates of pay had increased by about 3% and therefore it determined that a full-time salary of £27,114,75 per annum was reasonable for the current year. The Tribunal determines that Invoice 60 is reasonable and payable for the year in issue.

### **10) Emergency Phone Top Up**

118. The Applicants objected to paying for the topping up of the mobile emergency phone because it was not available 365 days of the year. The cost to the Service Charge was £100.00. The Applicants suggested £50.00 more appropriate. Miss Barney said it was not always possible to respond immediately 24 hours a day 365 days a year and agreed to the charge being reduced to £50.00.

### *Tribunal's Determination*

119. The parties having agreed the charge of £50.00 the Tribunal determined the cost reasonable.

### **11) Postage**

120. The Applicants submitted that postage of £121.31 was excessive and represented 204 stamps. In addition Mrs Kelston-Merritt questioned Invoices 14 (£7.30), 83 (£1.26) and 101 (£20.00) which were packages to the

Accountant which it was submitted were a business expense. She also questioned invoices 15 dated 12<sup>th</sup> April 2018 (£32.57 which equated to 56 stamps) and 16 dated 1<sup>st</sup> May 2018 (£34.80 which equated to 60 stamps) as these occurred at the time documents were sent out to the Occupiers the cost of which the Agreement stated should not be charged to Occupiers.

121. Mrs Kelston-Merritt said that she would agree to the reducing of the charge to £50.00 although £30.00 was probably more accurate.
122. The Respondent agreed to reduce the postage charge to £50.00.

*Tribunal's Determination*

123. The parties having agreed the charge of £50.00 the Tribunal determined the cost reasonable.

**12) Miscellaneous Items**

124. The Applicants questioned the purchase of a greetings card on one of the Miscellaneous Item receipts. Miss Barney said that it was inadvertently included on a receipt for another item purchased at the same time. The Respondent therefore agreed that invoice 92 for £8.98 should be reduced to £4.98.

*Tribunal's Determination*

125. The parties having agreed that Invoice 92 should be reduced to £4.98 the Tribunal determined the cost reasonable.

**Decision Summary**

126. The summary of the Tribunal's Decision is as set out in the table below:

<b>Service Charge Items</b>	<b>Invoices</b>	<b>Original Amount</b>	<b>Amount determined reasonable</b>	<b>Determination</b>
Water Mains Work	6, 12, 21, 77, 78	£686.41	£686.41	Not in Issue.
Fencing	11, 33, 48, 65, 96	£2,603.95	£1,103.95	Invoice 56 for <b>£1,500.00 removed.</b>
New Car Parking	58, 63, 74	£6,016.00	£1,002.66	2 of the 12 spaces determined to be chargeable. 2/12 of total of £6,016.00. <b>£5,013.34 reduction</b>
New Office	42, 44, 47, 54	£17,492.70	£10,645.00	Invoice 47 reduced from £11,170.00 by

				£1,210.00 to £9,960.00. Invoices 42 (£2,115.00) & 43 (£150.00) not chargeable to Service Charge. Only part of Invoice 54 (£4,057.70 - £3,372.70 = £685.00) chargeable to year in issue. <b>£6,847.70 total reduction</b>
Site Electricity for Sewerage, car park & CCTV	4, 28, 29, 43, 51, 52, 57	£335.90 + £147.86 = £483.76	£483.76	Site Invoices not in issue. Invoices 43, 52, 57, (£147.86) transferred from Office Column
Office Gas & Electricity	5, 13, 26, 75, 76, 80, 82, 94, 95	£383.40 + £75.00 = £458.40	£152.80	1/3 of total Invoices determined reasonable = £152.80. Invoices 80, 94 & 95 (£75.00) transferred from Office Column <b>£305.60 reduction</b>
Garden Maintenance	3, 8, 17, 22, 23, 24, 31, 32, 34, 37, 38, 39, 53, 84, 85, 89, 91, 98, 99	£4,334.12	£4,162.92	Invoices 85 & 89, 91 for <b>£171.20</b> determined unreasonable
Office	1, 2, 7, 9, 10, 18,19 20, 25, 27, 30, 35, 36, 40, 41, 45, 49, 50, 55, 59, 60, 62, 64, 66, 67, 68, 71, 73, 88, 90, 92, 97, 102, 103, 105	£32,163.86 Less Transfers of - £147.86 - <u>£75.00</u> £31,941.00	£31,857.00	a) Sage Invoices determined to be reasonable: 1, 18,20, 27, 36, 41, 45, 50, 59, 64, 67. b) Phone Invoices 55, 68, 100, 102 of £100.00 agreed at £50.00. c) Invoice 88 Fire Safety Training determined business. d) Invoices 43, 52,

				57 of £147.86 transferred to Site. e) Electricity Invoices 80, 94, 95 of £75.00. transferred to Office Electricity f) Salary £27,114.75 determined to be reasonable. g) Invoice 92 reduced to £4.98 <b>£84.00 reduction</b>
Postage	14, 15, 16, 69, 70, 72, 79, 81, 83, 86, 87, 93, 101, 104	£144.56	£50.00	Post invoices agreed at £50.00 <b>£94.56 reduction</b>
<b>Total</b>		<b>£64,160.90</b>	<b>£50,144.50</b>	<b>- £14,016.40</b>

127. The Tribunal determines that the following Service Charge is reasonable and payable for the year in issue:

Water Mains Work	£686.41
Fencing	£1,103.95
New Car Parking	£1,002.66
New Office	£10,645.00
Site Electricity	£483.76
Office Electricity	£152.80
Garden Maintenance	£4,162.92
Office	£31,857.00
Postage	£50.00
<b>Total</b>	<b>£50,144.50</b>

**Judge JR Morris**

## **ANNEX - 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.