



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

Case Reference : CHI/21UF/PHC/2019/0004

Property : Tudor Rose Park, South Coast Road, Peacehaven,  
East Sussex BN10 8UR

Applicant : James Delaney

Representative : ---

Respondents : Mitchell Richard Cooper

Representative : ---

Type of Application: Determination of a question arising – Section 4  
Mobile Homes Act 1983

Tribunal Members : Judge P.J. Barber  
Mr R Athow FRICS

Citygate House, 185 Dyke Road, Brighton BN3 1TL

Venue & Hearing Date: 27<sup>th</sup> August 2019

Date of Decision: 3<sup>rd</sup> September 2019

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**DECISION**

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## Reasons

### INTRODUCTION

1. The application dated 23<sup>rd</sup> February 2019, is for determination of a number of questions arising under the Mobile Homes Act 1983, or an agreement to which it applies. Tudor Rose Park is a mobile home park comprising 109 homes and in respect of which the Respondent is the site owner. The Applicant, Mr Delaney is the occupier of the home at No. 103 Tudor Rose Park; Mr Delaney has raised 4 separate questions in summary in relation to the following:-
  - (1) Failure to provide documentary evidence to support water re-charges to the Applicant
  - (2) Whether the Respondent should pay a 110<sup>th</sup> share of water charges in relation to the Respondent`s office at the site
  - (3) Whether the Respondent should compensate the Applicant for the Respondent not having contributed towards the overall water charges for the site for the last 6 years?
  - (4) Whether the Respondent is responsible for ascertaining the reason for recently higher water charges for the site?

In addition, the Applicant has requested that the Tribunal should make orders broadly as follows against the Respondent:

- (A) To confirm in writing to the Applicant which specific method of unmetered water re-sale is being used by reference to Ofwat guidance
- (B) To show how the water re-charge to the Applicant was calculated in respect of monthly invoices for the period December 2018 to March 2019
- (C) To fairly compensate the Applicant for the Respondent not having contributed a 110<sup>th</sup> share towards site water charges during the last 6 years
- (D) To ascertain the cause of water charges being 55% higher during November 2018 to February 2019 as compared to previous costs a year before
- (E) To ascertain the cause of mains water being turned off without notice for certain periods on 15<sup>th</sup> & 16<sup>th</sup> February 2019
- (F) To reimburse the Applicant if the cause of higher recharges for November 2018 to February 2019 was due to mains water supply leaks on the site
- (G) To reimburse the application fee of £100.00 in view of the Respondent having failed to answer these questions in previous correspondence

### INSPECTION

5. The Tribunal inspected the Property in the presence of Patricia Benson of No. 56, Brian Gosling of No. 33A, and Claire Barney, the Respondent`s daughter and site manager; the Applicant was not present for the inspection. Tudor Rose Park occupies a site which slopes away from South Coast Road; the office is close to the site entrance, off

South Coast Road. The site comprises 109 mobile homes, to which access is gained from a series of tarmac roadways which lead around the site; there are some parking areas. The Tribunal inspected two notice boards attached to the side wall of the office, but separated from the nearest tarmac roadway, by a strip of large gauge shingle; one of the notice boards included site information and the other displayed the site rules. The Tribunal also inspected the interior of the office which comprised of a front office, with toilet, kitchen and small rear office area and storage; there was a small basin in the toilet, and a small sink in the kitchen and additionally, a hot water boiler. There is no fixed disabled access to the office, access to which is gained via a short flight of timber steps. The mobile home at No. 103 is located close by the office. The Tribunal also inspected a verge area close by mobile home No. 58, from which it was indicated that excess surface water had previously pooled on the adjoining roadway. The Tribunal also inspected the water stop tap for the site in the rear garden area of mobile home No. 63 and were advised that the site water meter is located outside the site boundary, on an unmade-up private track leading to adjacent kennels.

## **THE LAW**

### **8. Section 4 Mobile Homes Act 1983 provides that:-**

*(1) In relation to a protected site ..... 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 ... 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)*

*(7) .....*

## **REPRESENTATIONS**

9. The hearing was attended by the Applicant Mr Delaney, Mrs Benson and Mr Gosling, and also Ms Barney, representing the Respondent. The Tribunal indicated that it would be appropriate for the parties to deal one by one, with each of the seven issues raised in the application, and identified at (A) to (G) in paragraph 1 above. Accordingly, the parties made their respective submissions on those issues as referred to below.

10. Which specific method of unmetered water resale is being used?

Ms Barney referred to Page 4 of the Ofwat “Guide to Water Resale” contained in Section 1 of the bundle; she stated that the method of re-charging used, was “equally between the purchasers” meaning in this case, equally between each of the 109 mobile homes on the site. Mr Delaney noted the confirmation given on this point.

11. How are monthly water recharges calculated?

Mr Delaney had said that about 10 years ago a template had been used and provided to each mobile home owner, setting out the calculation for each month; he was concerned that such template is no longer used and also said there had been many faults with the meter readings. Ms Barney agreed that they had previously used such a template, but that this was no longer possible following a change in the computer billing system being used. Ms Barney said that they always display the monthly water invoice in the information notice board on the outside wall of the office and added that they cannot now provide the information in the way which they did before. Mr Delaney referred to the Written Agreement, clause 22 of which on Page 11 in Section 1 of the bundle, provides that:

*22 The Owner shall –*

*(a) ...*

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

*(i) .....*

*(ii) Any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement*

In addition clause 5 on Page 17 of the Express Terms section of the Written Agreement, provides that:

*5 Communications*

*If the site owner sends you a communication under this agreement it must be in writing and posted or delivered to the mobile home or (if different) to your last known address. A communication can also be given by the site owner to you in person.*

Ms Barney insisted that there had not been mathematical errors made in any of the recharge calculations and reference was made to an example invoice at Page CB11 in Section 2 of the bundle, being a 4 page invoice from Castle Water, the supplier, and including on the first page a manuscript simple division of the total:

£2186.11 divided by 109 = £20.06

Ms Barney explained that Page 3 of the Castle Water invoice showed details of meter readings and applicable tariffs; Pages 2 & 4 added little relevant detail. Mr Delaney pointed out that many of the residents are elderly and it is not convenient for them to try to read the document displayed on a notice board, separated from the roadway by a shingle strip, and/or to ascend the office steps to view the document inside. Ms Barney conceded that she is happy in future to provide to Mr Delaney, Mrs Benson, Mrs Gosling and any other resident who may request it, a copy of Pages 1 & 3 of each monthly water invoice for the site, with the division calculation being added in manuscript.

12. Should the office contribute to water recharges?

Mr Delaney submitted that the office should contribute towards water consumption costs and that the monthly charges should accordingly, be divided by 110, not 109. Mr Delaney said that there is a water supply to the office, which resulted in water consumption for drinks making, toilet use and hand washing. Ms Barney referred to the extract from the Water Resale Order on Page 16 of the Ofwat “Guide to Water Resale”, saying that it provided for recharge only to dwellings. Ms Barney accepted that the office does use some water, but added that there are always some vacant units on the site, which are not consuming water whilst vacant, but that the monthly costs are still divided by 109, resulting in effect in the Respondent bearing a proportion of recurring water costs which she said more than off-set office consumption, given that the office is only open 3 days a week, and has no bath or shower facilities. An example was referred to – so that if in one month there are say 9 vacant units, then only 100 units would be paying towards water costs, each on the basis of a 109<sup>th</sup> share, resulting in collection by the Respondent of contributions being 100/109 of the invoice total; the balance being met by the Respondent. Ms Barney added that office water consumption is in any event less than for any of the residential units. Mr Delaney said that it is still unfair, given that he is a sole occupier of his mobile home, whilst some homes are occupied by up to 3 or 4 people, inevitably consuming more water, and that he remained of the view that the office should contribute a 110<sup>th</sup> share towards monthly water charges.

13. Why had water costs risen by 55% in the period November 2018 to February 2019?

Ms Barney said that water recharges had undoubtedly increased since Castle Water became the supplier in place of South East Water; however, she said the change had been necessary since South East Water ceased operating. Ms Barney referred to CB8 in Section 2 of the bundle, being an email dated 16 April 2019, from Jason Lawson at Castle Water, in which he referred to attached meter reads, adding “*there does not look like there has been a leak at property as all reads follow similar pattern, if a leak was at property we would be looking for the reads to spiral.*” Ms Barney added that bills in the past from South East Water, had been low, but that the Respondent had not always passed on actual meter readings, and billing was often on an estimated basis. Ms Barney said that they now provide monthly meter readings to Castle Water and referred to CB19 in Section 2 of the

bundle which she said indicated that the Respondent had tested the market and that if they had switched supplier to Everflow, yearly costs would increase by £162.63. Ms Barney also referred to CB17 in Section 2 of the bundle, which gives an indication she said, of average water bills, showing that a Studio / One bedroom unit would be likely to incur monthly water charges of £23.26. Accordingly, Ms Barney submitted that whilst the water charges have increased, they are still less than what is seen as the national average rate. Mr Delaney said that his question to the Respondent had nevertheless not been answered at the time he originally raised it.

14. Why was the water supply for the site turned off on 2 days in February 2019?

Ms Barney accepted that the water supply for the site had been turned off on 15 & 16 February 2019, because the Respondent`s contractors, who were carrying out installation of additional surface water drainage to a retaining wall on the site near mobile home No. 71B, had found water leaking. Mr Delaney said that the water leak was due to the Respondent`s contractors having cut through the mains water supply pipe. Ms Barney said that was not the case, referring to the colour photograph at CB25 Page 5 in Section 4 of the bundle, showing only perforated surface water pipes in the exposed trench where the contractors, she said had been working. Ms Barney explained that the water had to be turned off so that the source of the leak could be investigated, but that once it had been turned off, the leak in the trench had continued, indicating that it emanated from a different source. Ms Barney referred to a letter dated 13 May 2019 received from South East Water at CB21 in Section 4 of the bundle, stating that *“The main stopcock for your site isolated the water supplies to the residential properties however this did not stop the leak, meaning it was being fed from a different supply.”* Ms Barney said that whilst the leak was on the site, it was from a third party pipe which was reinstated, although ownership of the pipe was never actually confirmed.

16. Should the Applicant be reimbursed for higher water charges owing to water supply leaks?

Mr Delaney submitted that if the 55% higher water costs in the period December 2018 to March 2019 were as a result of supply pipe leakages, then he should be compensated by the Respondent. However, Mr Delaney indicated that other than as in the bundle, he had no other evidence to present as to the occurrence of leaks from the site water supply.

17. Reimbursement of Application & Hearing Fees

Mr Delaney said that he wished the £100 application fee and also the £200 hearing fee to be reimbursed to him by the Respondent; he added that he would have been content with a paper determination, however, he considered that an oral hearing had been arranged, owing to later submission by the Respondent of coloured copies of the trench photographs contained in Section 4 of the bundle. Mr Delaney also complained that the Respondent had been late in complying with the directions. Judge Barber explained to Mr Delaney that it had been the Tribunal which had decided in the interests of dealing with the matter fairly and justly, that an oral hearing should take place, given the relative complexity of the issues and the lack of clarity of the papers in the bundle, without additional oral amplification and explanation.

## 18. Closing Statements

Ms Barney confirmed that she is very happy to provide copies of Pages 1 & 3 of monthly water invoices to each of Mr Delaney, Mrs Benson and Mr Gosling and also to any other resident who asks for them. Ms Barney said that she had tried to look at the points raised by Mr Delaney, as and when they were put to the Respondent. Mr Gosling said that the residents are all elderly people who would simply like to see the information on the monthly water invoices and that what was being offered is now an improvement; he added that they would ideally like individual water meters for each pitch. Mrs Benson said that as a single occupier herself, she would prefer bills to be recharged on the basis of the number of occupants of each home. Mr Delaney had nothing to add, but submitted that he had thought the £200 hearing fee had arisen owing to late submission of documents by the Respondent.

## **DECISION**

19. The Tribunal, have taken into account all the case papers in the bundle and the oral evidence given at the hearing.

Which method of unmetered water resale is being applied?

20. The Tribunal notes the confirmation given by the Respondent as to the method used, being equally between the homes on the site.

How are monthly water recharges calculated?

21. The Tribunal has no jurisdiction in regard to enforcement of Ofwat regulations or requirements arising under the Water Resale Order 2006. However, in the context of the Mobile Homes Act 1983 and the Applicant's Written Agreement, the Tribunal accepts the evidence given by Ms Barney to the effect, firstly that any office water consumption is minimal, taking into account limited office opening hours, and secondly that in practice the Respondent bears a share of the water recharges at any times when any of the 109 units on the site are vacant, by virtue of the example referred to in paragraph 12 above. Overall the "swings and roundabouts" approach is not considered one which is materially adverse to the Applicant. Accordingly, the Tribunal accepts that water recharging on the basis of 109<sup>th</sup> shares is not wholly unreasonable.

Compensation for 110<sup>th</sup> Office water consumption

22. For the reasons elaborated upon in the preceding paragraph, the Tribunal does not consider the charging arrangement based on 109<sup>th</sup> shares to be wholly unreasonable.

Cause of 55% increase in water charges

23. The Tribunal accepts the evidence given by Ms Barney to the effect that water costs in the period have risen, also that the Respondent has reasonably tested the market, and further that the charges appear not wholly out of line with national average consumption. The Tribunal finds no unequivocally clear or wholly convincing evidence that any increase has been due to water supply pipe leakages on the site for which the Respondent should be responsible.

### Water Supply being turned off

24. The Tribunal accepts the evidence provided by Ms Barney as to the reasons for the supply being turned off in February 2019 and also finds the evidence presented, that the leak discovered, was not in relation to the site water supply pipe, to be credible and persuasive.

### Reimbursement of charge increases due to supply pipe leaks

25. The Tribunal finds that no wholly convincing or definitive evidence has been provided by the Applicant to support the view that the increased water charges in the relevant period have been due to site water supply pipe leaks and/or due to default by the Respondent.

### Reimbursement of fees

26. The Tribunal accepts that the Respondent had made some endeavours to deal at least in part with some of the applicant`s various complaints about water supply as they arose over the course of time. The evidence given for the Respondent at the hearing has been largely accepted. Accordingly, the Tribunal is not minded to exercise its discretion to order the Respondent to reimburse any of the fees incurred by the Applicant in this matter.
27. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal  
appointed by the Lord Chancellor

## 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.
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.