



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

<b>Case Reference</b>	: CHI/18UH/PHC/2021/0007
<b>Property</b>	: 25 The Crescent, Pathfinder Village, Exeter EX6 6BY
<b>Applicant</b>	: Avondale Property (Holdings) Limited
<b>Respondent</b>	: Stephen J Blake
<b>Type of Application</b>	: Park Homes: Any question under section 4 of the Mobile Homes Act 1983 (as amended)
<b>Tribunal Members</b>	: Judge C A Rai
<b>Date and Venue of Hearing</b>	10 June 2021 Paper Determination without a hearing
<b>Date of Decision</b>	: 7 July 2021

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**DECISION**

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1. The Tribunal determines and declares that the Respondent is in breach of clause 3(a) of Part IV of the written agreement dated 15 September 2000 made between the Applicant and the Respondent [Page 11]. He has not paid the pitch fee or the charges for water due to the Applicant under the terms of his occupation agreement since October 2019.
2. The Tribunal orders the Respondent to pay the arrears of his pitch fee due on 2 February 2021 (the date of the Application) of £1,847.07.
3. The Tribunal orders the Respondent to pay any further arrears of his pitch fee that have accrued between 1 March 2021 and the date of payment within 28 days of the date on which the Respondent receives a copy of this decision.
4. The reasons for its decision are set out below.

5. The Applicant who is the owner of Pathfinder Village Exeter Devon EX6 6BY (the park) applied to the Tribunal for a determination under section 4 of the Act (the Application) on 2 February 2021.
6. The Application related to 25 the Crescent Pathfinder Village EX6 7BY (the Property) which is the pitch occupied by the Respondent upon the terms of a Written Statement dated 15 September 2000 made between the Applicant and the Respondent [Page 11].
7. Mr Dallas Banfield Regional Surveyor issued Directions dated 17 March 2021 which provided that the Application would be determined without an oral hearing unless either party objected within 28 days, but that the Tribunal would review its decision upon receipt of a determination bundle. The Applicant was directed to leave a copy of the Application and the Directions at the Property.
8. A copy of the Application was served on the Respondent by Andrew John Payne, joint park manager of Pathfinder Village (the Park), by hand together with a letter dated 18 February 2021 from the Applicant's Solicitor and the bundle of documents which had accompanied the Application.
9. The Applicant was directed to send the Tribunal and the Respondent its signed statement of case with copies of all relevant documents and any witness statements on which it relied.
10. The Respondent was directed to send the Applicant and the Tribunal a signed statement of his response to the Applicant's case with copies of all relevant documents and any witness statements on which he relied.
11. The Applicant was directed to send a concise reply to that response.
12. The Applicant was charged with the preparation of an agreed bundle of relevant documents (the Hearing Bundle) which would contain copies of all documents disclosed to the Tribunal on or before 28 April 2021.
13. The Hearing Bundle was reviewed by Judge D R Whitney who issued Directions on 14 May 2021 which stated that:-
  - a. the Respondent had not taken part in the proceedings;
  - b. there would be no dispute as to the facts of the case; and
  - c. the Application was suitable for determination on the papers without an oral hearing.
14. The Application has been determined without a hearing on the written representations received by the Tribunal. The documents to which the Tribunal was referred are contained in a single electronic Hearing Bundle prepared by the Applicant comprising 95 pages. Throughout this decision references to pages in that bundle are shown within square brackets.

### **The Applicant's Submissions**

15. The Respondent has occupied the Property since 16 September 2000 on the terms of his Written Statement referred to above.
16. The Applicant referred the Tribunal to the express terms contained in Part IV of that Written Statement. Clause 3(a) requires the occupier to pay to the owner "an annual pitch fee of £721.20 subject to review as hereinafter provided by equal quarterly payments in advance on the 29<sup>th</sup> day of each quarter" . Clause 3(b) requires the occupier to pay to the owner "to pay and discharge all general and/or water rates which may from time to time be assessed charged or payable in respect of the mobile home or pitch (and/or a proportionate part thereof where the same are assessed in respect of the residential part of the park) and charges in respect of the electricity gas water telephone and other services.
17. The Applicant stated that it has demanded (and been paid) the annual pitch fee from the residents of the park in monthly instalments on the first day of every month "for many years". The Respondent (and other residents of the park) did not object and have consistently paid the amounts demanded monthly. The Applicant therefore submitted that the express terms of the written statement have been amended "through practice to provide for monthly payment of the pitch fee".
18. The Respondent has not paid any pitch fees since he paid the monthly instalment of £112.47 due on 1 October 2019. That was the increased pitch fee which had been reviewed in September 2019. The increase had been explained in the Respondent's solicitors letter dated 4 August 2020 sent to the Applicant by Tozers [Page 36].
19. The annual water charge is also payable by monthly instalments. The residents of the park are notified of changes to the amount due at the same time as the annual pitch fee review is proposed. The monthly instalment of £112.47 included a proportion of the annual water charge of £260.79 payable from 1 October 2019. The last payment received from the Respondent in October 2019 was for the monthly pitch fee including the water charge.
20. The Applicant has sent repeated demands for pitch fees and water charges due from the Respondent since November 2019. It has told the Tribunal that the Respondent has nether responded nor made any payment.
21. The monthly sum due for both pitch fees and water charges from 1 November 2019 until 30 September 2020 was £112.47. Thereafter the combined monthly amount due was increased to £121.98 [Pages 52] from 1 October 2020.
22. At the end of March 2021, the total arrears due from the Respondent to the Applicant for pitch fees and water charges was £1,959.81 [Page 76].

23. The Applicant stated that it has sent many letters to the Respondent [Pages 26 – 34 and 52 – 56]. Their solicitors sent two letters to the Respondent, by special delivery, both dated 4 August 2020, notifying him that the Applicant would be entitled to issue proceedings against him for recovery of the sums due [Pages 35 – 37]. He was informed that he was in breach of the terms of his written statement. It was explained that under the terms of the Act, the Applicant would be entitled to apply to the First-tier Tribunal for a declaration for breach and to the County Court for permission to terminate the Agreement.
24. Robin Huckerby, a Director of the Applicant, has confirmed in a signed witness statement dated 25 March 2021, that none of the park staff have been able to speak directly to the Respondent although they believe he is still living at the Property because he has been seen in the park. The park managers have seen woodsmoke emerging from the chimney of his home [Page 88].
25. The Applicant wrote to Devon County social services on 2 December 2020 [Page 95] to notify them of its concerns because of the absence of any actual contact between the Respondent and the Applicant since the date of the last payment, received by the Applicant, in October 2019.
26. In the Application the Applicant asked the Tribunal the following question:-
  - a. Is the Respondent in breach of clause 3(a) of Part IV of the Agreement which obliges him to pay the Applicant the annual pitch fee in quarterly instalments?
 and requested that the Tribunal make:-
  - b. A declaration that the Respondent is in breach of his agreement, and
  - c. An order that he pay the current arrears of £1,687.05 as at 2.02.21 and any further instalments that have accrued since that date.
27. They also expressed a hope that an order from the Tribunal might be sufficient to persuade the Respondent to pay the outstanding pitch fees or to seek help, if that is what is required.

### **The Law**

28. The Tribunal's jurisdiction to deal with this application is contained in section 4 of the Act and in section 231A of the Housing Act 2004 . Extracts of the relevant parts of those sections are set out below.

#### **Section 4 Mobile Homes Act 1985**

Jurisdiction of a tribunal or the court [...][2](#)

(1) In relation to a protected site [...][2](#) , 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 [...][2](#) , 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.

#### Section 231A Housing Act 2004

##### *Additional Powers of First-tier Tribunal and Upper Tribunal*

- (1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the [Mobile Homes Act 1983](#) , the [Housing Act 1985](#) or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).
- (2) The tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.
- (3) When exercising jurisdiction under this Act, the directions which may be given by the tribunal under its general power include (where appropriate)-
- (a) directions requiring a licence to be granted under [Part 2 or 3](#) of this Act;
  - (b) directions requiring any licence so granted to contain such terms as are specified in the directions;
  - (c) directions requiring any order made under [Part 4](#) of this Act to contain such terms as are so specified;
  - (d) directions that any building or part of a building so specified is to be treated as if an HMO declaration had been served in respect of it on such date as is so specified (and such a direction is to be an excluded decision for the purposes of [section 11\(1\)](#) and [13\(1\)](#) of the [Tribunals, Courts and Enforcement Act 2007](#) );
  - (e) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.
- (4) When exercising jurisdiction under the [Mobile Homes Act 1983](#) , the directions which may be given by the tribunal under its general power include (where appropriate)-
- (a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;
  - (b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;

(c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;

(d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.

(5) In subsection (4)-  
 “mobile home” and “protected site” have the same meaning as in the [Mobile Homes Act 1983](#) (see [section 5](#) of that Act);  
 “pitch” has the meaning given by [paragraph 1\(4\) of Chapter 1 of Part 1 of Schedule 1](#) to that Act;  
 “pitch fee” has the meaning given in [paragraph 29 of Chapter 2](#) , [paragraph 13 of Chapter 3](#) , or [paragraph 27 of Chapter 4](#) , of [Part 1 of Schedule 1](#) to that Act, as the case may be.

29. Part 1 of Chapter 1 of schedule 1 of the Act contains the implied terms which are the terms replicated in Part III of the Written Statement which is the occupation agreement (dated 15 September 2000) signed by the Respondent. Part IV of that statement contains the express terms of the agreement and includes an undertaking by the occupier to pay the annual pitch fee and to discharge the water rates. The wording has been referred to above (see paragraph 16).

### **Reasons for the Decision**

30. The Tribunal is satisfied based on the evidence provided to it by the Applicant that the Respondent has not paid the Applicant any money in respect of pitch fees or water charges due since October 2019. Copies of various letters sent by the Applicant to the Respondent are included in the bundle. In addition, the bundle contains statements made on behalf of the Applicant that copies of the Tribunal application and the supporting documentation were hand delivered by Adrian Payne, joint park manager, to the Respondent at the Property.
31. Furthermore, the Respondent was seen on the park by park staff during the winter of 2020/2021, and the Applicant’s witnesses have confirmed that they have seen evidence that his home remains occupied. [Page 86].
32. The contractual obligation to pay the pitch fee and water charges is contained in the Written Statement dated 15 September 2000 made between the Applicant and the Respondent. The relevant provision is clause 3 of Part IV in which the occupier (the Respondent) undertakes to pay an annual pitch fee and to pay and discharge all general and or water rates [Page 17].
33. Although that agreement provided for quarterly pitch fees the Applicant has said it demanded pitch fees monthly in advance and the residents of the park have paid the pitch fees monthly in advance on the first day of each month. Until October 2019 the Respondent paid his pitch fees and his water charges monthly in advance in response to those demands from the Applicant.

34. Taking into account the evidence received the Tribunal is satisfied that the Respondent is contractually obliged to pay the pitch fees and water charges and that he has not paid the Respondent any of the sums demanded since 1 November 2019. It is also satisfied that the Respondent is living at the Property and has received notice of the Application.
35. The Tribunal therefore declares, in response to the Applicant's question, exercising its jurisdiction under section 4(1)(a) of the Act, that the Respondent is in breach of the express terms of the Written Statement and in particular in breach of clause 3 of Part IV of that agreement.
36. The Applicant has asked the Tribunal to make an order that the Respondent pay the current arrears (which were the arrears due on 27 February 2021) and all further instalments that have accrued.
37. By extracting information from the bundle, the Tribunal has concluded that there is some confusion with regard to the figures which the Applicants witnesses have referred as being outstanding.
38. The Applicant has disclosed a statement sent to Mr Blake referring to his arrears on 11 January 2021 as £1,725.14 which refers to 11 payments of £112.47 plus 4 payments of £121.98 [Page 56]. The Tribunal concluded that this was for the period between November 2019 until September 2020 – 11 months @ 112.47 and between October 2020 and January 2021 – 4 months @ 121.98.47. The Tribunal believes that this is the correct figure. However, the application dated 2 February 2021 refers to an arrears figure of £1,687.05 [Page 6]. The Tribunal has assumed that the arrears at that date should have included the payment due on 1 February 2021 which would be **£1,847.07**.
39. In his statement Robin Huckerby referred to arrears on 30 September 2020 of £1,237.17 [Page 76] which matches the figure on the letter dated 7 September 2020 sent to the Respondent by Samantha Payne (the joint park manager) [Page 53]. However, Robin Huckerby then stated that the combined monthly amount of the existing monthly pitch fee of £95.75 and the new monthly water charge of £24.69 was £120.44 [Page 76 paragraph 10].
40. The Tribunal has concluded that this is the wrong figure because the monthly combined figure for the pitch fee and water charge shown on the letter sent to the Respondent by Samantha Payne on 20 November 2020 refers to a combined monthly charge of **£121.98** [Page 55].
41. The statement of debt dated 11 January 2021 sent to the Respondent refers to arrears of £1,725.14 at that date [Page 56]. However, that statement also contains an error as it refers to 11 x £112.47 equalling £1,237.22. The correct calculation as shown on Samantha Payne's letter to the Respondent, dated 7 September 2020, (see paragraph 39 above) is **£1,237.17**.

42. The amount outstanding on 11 January 2021 was **£1,725.09** to which the Tribunal added the additional monthly charge £121.98 to calculate the total arrears at the date the of the Application as **£1,847.07**.
43. The Tribunal has ignored the interest figures which the Applicant's solicitor has referred to in Annex 2 to the Pre Action Protocol Form [Page 39] as no evidence has been presented that demonstrates that the Applicant has any contractual right to interest. The Applicant has not referred to this in any of its witness statements.
44. The Tribunal exercising the jurisdiction conferred by section 231A of the Housing Act 2004 **ORDERS** the Respondent to pay the arrears of pitch fees including water charges :-
  - a. of **£1,847.07** being the sum due on 2 February 2021; plus
  - b. the monthly sum of **£121.98** due from 1 March 2021 until the date of paymentwithin 28 days of the date on which he receives a copy of this Decision.

## **Judge C A Rai**

### **Appeals**

1. A person wishing to appeal this decision to the Upper 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.