



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

Case reference : **LON/00AC/PHV/2022/0001
LON/00AC/PHV/2022/0002**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **54 Arkley Park, Stirling Corner, Barnet
Road, London N5 3JH. (1)
89 Arkley Park, Stirling Corner, Barnet
Road, London N5 3JH (2)**

Applicant : **Arkley Estates Limited.**

Representative : **Naylor Solicitors LLP.
Ref: VK/VK/1611.**

Respondent : **Mrs. J. Rapacioli (No. 54)(1)
Mr. M. Clifton (89)(2)**

Representative : **In person.**

Type of application : **Application to determine questions
arising under the Mobile Homes Act
1983 or an agreement to which it applies
– Section 4 Mobile Homes Act 1983.**

**Tribunal
member(s)** : **Tribunal Judge Aileen Hamilton-Farey.**

Venue : **Remote.**

Date of decision : **11 May 2022.**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has been consented to by the parties. The form of remote hearing was

P:PAPERREMOTE. A face-to-face hearing was not held because it was not requested by the parties, and all issues could be determined on the papers. The documents that the Tribunal were referred to are in a bundle of supplied by the applicants, together with additional replies and documents supplied by the respondents.

Determination:

1. The respondents are liable to pay their water and sewerage charges in addition to the pitch fees.
2. The applicants should reduce the amounts claimed from the respondents by 25% to reflect the inconvenience caused by water leaks and disruption to the communal/garden areas. The applicants shall send the relevant calculation to the respondents, who shall pay the sums claimed within 14 days.
3. The respondents should in future pay their water charges by standing order/direct debit.
4. The applicants may not recover any of their costs of these proceedings from the owners/residents of Arkley Park.

Application:

5. The applicants made two applications to the tribunal on 21 December 2021 under Section 4 of the Mobile Homes Act 1983 (as amended) (“the 1983 Act”) which enables an application by a Park Mobile Home Site Owner or Occupier of a Park Mobile Homes to be made to a Residential Property Tribunal for a determination of any question arising under the Act, or agreement to which it applies.
6. The applications relate to the same matters, which were:
 - Were the Respondents liable to pay water and sewerage rates under the Agreement in addition to the Pitch Fee? Or were the rates included within the pitch fee?
 - That the Respondent is to pay within 14 days of the Order arrears of water and sewerage rates at the amount in arrears at the date of the application, or such other amounts as is assessed by the Tribunal to be due at the date of the hearing, and
 - The Respondent is to set up a standing order in respect of the water and sewerage charges forthwith for payment of water and sewerage charges and to maintain a standing order in place for such charges for so long as they are entitled to the benefit of the Agreement.
7. Directions were issued by Judge Timothy Powell on 19 January 2022. These required the parties to file and serve on each other their statements of case, witness statements and any other documents on which they wished to rely. Responsibility for preparation of the bundle was given to the applicant. The respondents complained to the tribunal that the applicants had not fully complied with the directions and in the event both parties

filed bundles. In addition, the respondents sent further correspondence and photographs to the tribunal after the final date for filing, these had not been copied to the applicants as directed. The tribunal forwarded the correspondence to the applicants who were then given an opportunity to reply.

8. All of the documents filed have been considered by the tribunal.
9. The cases, in essence, relate to the same issues and therefore this decision covers both applications.

Background:

10. There is no dispute that Arkley Estates Limited is the freeholder of the site at Arkley Park, and that the site is a Protected Mobile Home Site as defined in the Mobile Homes Act 1983 (as amended). The freehold was acquired in 2019.

11. Both respondents occupy pitches at the Park, Mrs. J. Rapachioli occupies the mobile home on pitch number 54 and Mr. Clifton the home on pitch 89. Both pitches are let under the same type of agreement that sets out the site rules, the pitch fees to be paid and any other fees that might be payable, together with the responsibilities of the parties in relation to repair, maintenance and use of the site.

12. Mrs. Rapachioli has occupied her pitch since June 2006 having taken an assignment from a Mr. and Mrs. Hunt. At the time of the assignment, she was issued with a copy of the Written Statement made under the Act dated 12 November 1998, a copy of which was supplied in the bundle.

13. Mr. Clifton has occupied since August 2010 following an assignment from Mrs. P. Foord. As part of these proceedings, he was served with copies of the Written Statement and Park Rules.

14. Under that Statement, the respondents agreed under Clause 21 to

- a) Pay the pitch fee to the owner.
- b) Pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner.

15. In addition, the respondent agreed under the Express Terms of the agreement (Part IV).

- a) To pay the owner an annual pitch fee of £1700 (one thousand seven hundred pounds) subject to renew at hereinafter provided by equal payments in advance on the four quarter days of each year 25 March, 24 June, 29 September and 25 December. Thus, the pitch fees are payable on the usual quarter days.

- b) Under Clause (h) To pay and discharge all general and/or water rates which from time to time be assessed charged or payable in respect of the mobile home or the 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 electricity gas water telephone and other services.
- c) Under Clause (j) to comply with the park rules from time to time in force a copy of the current park rules being annexed hereto.

16. Clause 45 of the Park Rules states:

'Pitch fees and/or electricity/gas or all other payments due to the park owner must be made weekly/four weekly/calendar monthly or quarterly in advance. All charges must be made by standing order unless alternative payment arrangements have been agreed in writing by prior agreement with the park owner. Unpaid charges will be liable to interest at the rate of 4% above base rate until payment is made.'

- 17.** Neither of the respondents has suggested alternative wording for the Written Statement or Park Rules relied on by the applicants and neither has suggested that they have paid their water rates directly to the Water Company and have in the past paid the owner for water supplies/waste.
- 18.** It is clear that there has been substantial correspondence between the original owners of the Park, the original managers' and the current owners/managers in relation to this matter.

The applicant's case:

- 19.** The applicants state that on or around 28 November 2021 a water leak was reported to the Park Warden and that this leak was investigated the following day. A water detection company was engaged to find and repair the leak but were unable to do so because it appeared that the leak was below the concrete caravan base of Plot 50 and substantial excavation was necessary to find and repair the leak. They do not refer to any substantial previous leaks that the respondents say occurred on the site.
- 20.** The applicants also say that it was necessary to turn off the water supply and a water main was replaced with a new pipe constructed around the concrete base. That residents were informed of the need to switch off the supplies, and the leak was finally repaired on 9 February 2022. At the time of these applications the remedial ground works had not been completed but were anticipated to start shortly weather permitting.
- 21.** The applicants say that both respondents originally claimed that the charges for water were included within the pitch fees and had withheld

their contributions for water and sewerage on that basis. The situation appears more complicated than that.

22. The applicants offered to reduce the overdue sums to each of the respondents in order to settle the dispute early, but neither respondent availed themselves of this offer.
23. The applicants also say that the amount charged to each of the owners on the site does not cover the cost of supply and have provided evidence to support that statement. They also say that the amount charged to the owners is less than the amount that would be charged to an occupier of a small flat in the area. Again, they have provided evidence to support this statement. They wish to move to a system whereby the residents pay the actual costs incurred for water/sewerage, so that they are no longer subsidising the scheme.
24. The applicants seek the declarations identified at the beginning of this decision.

The respondents' case:

25. Mr. Clifton says that when he was purchasing the home, he asked the for information about the water rates and was told that these were included within the pitch fee. He says that he was not provided with sufficient information/paperwork and that he sought advice from IPHAS about the lack of clarity regarding the water charges and that because pitch fee renewal forms had not been properly completed in accordance with the Act, then the water charges were included within the pitch fee.
26. He says that the owners did not provide the explanation of how the pitch fees had been calculated or provide details of what was/was not included within that fee. Although he maintained this argument for some time, in his letter of 25 June 2018, he conceded that the water charges were separate to the pitch fee and acknowledged his arrears. In that letter he said that he would withhold payment until there had been a land check. It is not clear what he means by that, but presumably, he required a check of the pipework to ensure that it was in good repair, and any remedial works necessary to restore the services had been carried out.
27. Mr. Clifton has provided statements of other residents and copies of documents on which he relies. His statement covers both himself and Mrs. Rapacioli, although she has also produced a statement. He has provided copies of correspondence with the local authority regarding the leaks and the latter said they would issue a Compliance Notice to the owners to say that the conditions of the site licence were not being complied with. The letter dated 22 April 2022 from Councillors Paul Edwards and Emma Whysall has been provided in evidence.
28. The respondent's case appears to be that, due to the various water leaks, a lack of adequate repair and maintenance to the infrastructure,

inconvenience and a lack of response to complaints and queries to the site manager, they should be entitled to a reduction in water charges and/or compensation. They say that 'residents' should be entitled to the reductions; however, I can only deal with the application before me, and if other residents wish to pursue a claim for a reduction of charges, then they must make their own application to the Tribunal.

- 29.** Mrs. Rapacioli has provided a statement in which she says that she does not agree with the applicant's statement of case but accepts that she contracted to pay water and sewerage charges.
- 30.** She says that her decision to withhold payment is broadly based on two separate issues. These were:
 - a.** That for some years the annual pitch fee review forms had been incorrectly completed, and that no details or figures had been provided on any of the forms since at least April 2018. She believes that these errors on the part of the applicants means that she is not liable for the charges.
 - b.** That second issue is that, over the years, there has/had been a long on-going problem of mains water leakages. She says that despite providing evidence of the leakages the pipes were patched up and poorly maintained. She says that in 2018 there were a number of water leaks in the park, these were repaired by a constantly changing gang, the foreman of which was, she asserts was an associate of their park manager. Repairs were cheap and failed to last. She says that in July 2018 Affinity Water carried out a 3-day day and night mains water reading which revealed a constant leakage of 200 litres per hour over the entire period. She also asserts that the Affinity Water were going to serve a Wastewater Notice, and that there had possibly been a mains water leak for 20 years. Apparently, the operative said that the cost would be well over £1,000 per year and that 'it was unfair that this should be passed on to the residents. In the event, a waste water notice was not served by Affinity Water.
 - c.** Mrs Rapacioli says that several other substantial leakages occurred during 2018 and 2019, and that in 2017 she experienced flooding and water ingress to her own property, and that the grass around her property was waterlogged with the result that some of her shrubs and plants died. She says that despite visits to her property by the park manager, nothing was done, and the leaks continued, and she was unable to use her garden area due to the water.
 - d.** As part of her evidence Mrs. Rapacioli has provided copies of correspondence from other residents with the park owners and managers relating to various leaks and flooding.

- e. She finally says that the issue of £30 to £40 per quarter in respect of water charges is not the issue, but the on-going denial of mains water leakages and the refusal to acknowledge these and make any effort to make any reduction in charges to residents is the issue.

Applicant's reply:

- 31. The applicants have made comment on Mrs. Rapacioli's statement as follows:
- 32. They say that where there had been water leaks in the past the cost of water had been borne by the applicant and not passed onto the occupiers and that the water rates had not materially increased over the past decade. They have produced a copy of the individual accounts for pitch fees and water, and this shows that the water rates have not increased in line with any additional water consumption.
- 33. They also that some of the leaks occurred prior to the assignment of the freehold in 2019, and therefore cannot be held responsible for leaks prior to this period. They do accept that leaks did occur but say these were attended to in a timely manner.
- 34. They also say that a Compliance Notice served by the local authority was not in relation to the water leak, but concerned matters not connected with this application. The applicants have confirmed that the repairs to the water main were completed by the beginning of February 2022 and that water had been fully restored.
- 35. They also state and have provided evidence to show that the amount charged to the respondents for water is less than that for an average similarly sized flat in the area, and that none of the costs of the additional water used on the site through leakage, and charged to the applicant by the water company, have been passed onto the occupiers. I am satisfied that this is a reasonable approach.

Reasons for the Decision:

- 36. I am satisfied from the evidence supplied by the applicants that the water and sewerage charges are payable on a quarterly basis in addition to the pitch fee. I rely on the terms of the Written Statement in this respect. I have also had regard to the respondent's statements in which they both accept liability.
- 37. In addition, the respondents had accepted their obligations prior to the water leak, and whilst they may have suffered some inconvenience when it was necessary to turn the water supply off for repairs to be carried out, and that repairs did take more time than expected, these factors do not absolve the respondents of their liability to pay the water charges.

- 38.** Having found that the respondents are liable for the water charges, I must assess how much of their arrears they should pay. I accept that the respondents have been frustrated by the length of time that it has taken to resolve the water leak issues, whilst some of these occurred prior to the applicant's purchase of the freehold, it is clear that the site manager could have taken more timely action and responded to residents' concerns and queries. The respondents have requested that compensation be given to one resident who was injured whilst leaks were occurring, but I do not have the jurisdiction to do so, and that resident must take their own advice on the matter.
- 39.** I take into consideration however that the applicants were prepared to offer a reduction of 25% against the sums claimed, and on balance find that to take account of the inconvenience suffered by the respondents, this would be a reasonable reduction in the sums claimed. I therefore order the applicants make a reduction of 25% against the water charges for 2021/2022. They should calculate the reduction and present an itemised account to the respondents as soon as practicable, and the respondents should pay the sum due within 14 days.
- 40.** In addition to the above, I order that the respondents shall from the next payment date, make payment of the water charges by standing order/direct debit.
- 41.** Although the applicants have been partially successful in this application, I make no award for costs and Order that the applicant may not recover any of the costs of these proceedings from the residents of Arkley Park to reflect the lack of service by the managers, and inconvenience caused to the residents.

Signed electronically.
Aileen Hamilton-Farey

Date:
11 May 2022