



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

Case References : **CAM/00MF/PHC/2020/0007**

HMCTS : **CVP**

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

Park Home Addresses : **1, 2, 3, 4, 5, 7, 8, 10, 15, 16, 17, 18, 19, 20, 21,
22, 23, 24, 27, 30, 31, 32, 34, 36, 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**

Type of Application : **Application for Review or Permission to
Appeal**

Tribunal : **Judge JR Morris**
**Regional Valuer Mrs M Hardman FRICS,
IRRV (Hons)**

Date of Original Decision: **26th April 2022**
Date of Application : **9th May 2022**
Date of Decision : **27th May 2022**

DECISION

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Decision of the Tribunal

1. The Tribunal has decided not to review its Decision and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal against its Decision.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant or respondent may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal. Where possible, you should send your application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.
3. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

Reason for the Decision

4. The reason for the decision is that the Tribunal had considered and taken into account all of the points now raised by the Applicant, when reaching its original decision.
5. The original Tribunal's decision was based on the evidence before it and the Applicant has raised no legal arguments in support of the application for permission to appeal.
6. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by the applicant in the application for permission to appeal, in the Appendix attached.

Judge J R Morris

APPENDIX TO THE DECISION
REFUSING PERMISSION TO APPEAL

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal. References in square brackets are to those paragraphs in the main body of the original Tribunal decision.

Original Application and Decision

1. An Application dated 9th August 2021 was made 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:
 - (1) To determine the invoices to be included and the reasonableness of their cost in respect of the Service Charge incurred in the year ending 31st March 2021 payable in the year ending 31st March 2022.
 - (2) To determine the payment of the water charge.
2. The Tribunal determined the reasonable Service Charge for the year 1st April 2020 to 31st March 2021 payable during the year 1st April 2021 to 31st March 2022 is a total of £38,705.51 which for each of the 54 Mobile Homes (including the Rented Units) is £716.77 per annum which is £59.73 per month.
3. The Tribunal determined that the Water Charge for the year 1st April 2020 to 31st March 2021 payable during the year 1st April 2021 to 31st March 2022 is a total of £17,224.39, which for each of the 54 Mobile Homes (including the Rented Units) is £318.97 per annum which is £26.58 per month.
4. The Tribunal ordered
 - 1) The Current Method of monthly payment in arrears shall continue as follows:
 - a) The water charges incurred during the year ending 31st March 2021 are to be paid monthly in arrears during the year ending 31st March 2022.
 - b) The water charges incurred for the year ending 31st March 2022 are to be paid monthly in arrears during the year ending 31st March 2023.
 - 2) During 2022, the Respondent must:
 - a) provide each Occupier with an account of how much they are in debit or credit under the present method of charging by 31st July 2022. For those in debit a scheme should be proposed to ensure that their monthly payments up to 31st March 2023 cover all outstanding sums so that they are up to date with their payments under the Current Method by 31st March 2023.
 - b) carry out a consultation under paragraph 22(f) of the Written Agreement with regard to Transitional Arrangements for the payment of the Water Charge quarterly.

The Present Application

Applicants' Grounds

5. The Applicants seek a review or permission to appeal the Tribunal's decision dated 4th March 2022 on the following Grounds.

Ground 1

6. The Tribunal changed its decision CAM/OOMF/PHI/2021/0010 in which it noted that there had been a miscalculation in the figures during 2019 and that the Occupiers should have paid £47.48 more than had been demanded to that date. The decision was based on figures provided by the Respondent and were not substantiated by a bill. The new figures involved a water bill dated May 2016 which included an amount unpaid from the previous bill.

Ground 2

7. The Tribunal misapplied the Water Resale Order. The Applicants said that in the past the Service Charge had included the Water Charge but the Service Charge demand received in March 2020 did not include the Water Charge. No details of the amount or how it was to be paid were provided. The Water Charge that should have been demanded was for the period 1st April 2019 to 31st March 2020 which is payable during the year 1st April 2020 to 31st March 2021.
8. The Applicants requested details of the Water Charge in an email dated 6th March 2020 and, in a letter, dated 14th March 2020 but were not told what the Water Charge was until 24th January 2021. Therefore Article 9 of the Water Resale Order should be applied, which states that half the average charge of the area is payable. As MereOak Park is the local area, the Water Invoices dated 28th May 2019 to 17th February 2020 should be reduced to £165.12 per unit.

Respondent's Response

Ground 1

9. The Respondent stated that in relation to the first ground of appeal, it is evident from the 2022 Decision that the Tribunal has not sought to reopen or vary the decision from 2019 (which was also given by Judge Morris). It is evident from [58]-[60] of the 2022 Decision that the Tribunal was able to calculate the correct amount payable by the residents for the period in question, having now had the benefit of seeing the actual invoices. All of the invoices were provided to the Applicants ahead of the hearing, and so if the Applicants wished to challenge the figures, they had plenty of opportunity to do so at the hearing. For these reasons, the Respondent believes that this ground of appeal shows no realistic prospect of success.

Ground 2

10. In relation to the second ground of appeal, the Applicants fail to explain why in their opinion the relevant paragraphs [75] and [76] of the 2022 Decision are wrong in law. The Respondent avers that the reasons given by the Tribunal in [76] of the 2022 Decision for finding that the water charges were compliant with the Water Resale Order are sound, in that “The purpose of the Order is not to require the Respondent to provide the invoices within 28 days only to make the amount and apportionment clear”. The Applicant has not advanced any reasoning to suggest that this determination was wrong in law, and as a result this ground of appeal also shows no realistic prospect of success.
11. Consequently, the Respondent believes that the application for permission to appeal should be refused.

Decision

Ground 1

12. In order to assess the Water Charge for the period in issue and the manner in which it should be paid the Tribunal set out a table of all the invoices that had been provided [56].
13. The determination in case reference CAM/oomf/PHI/2019/0010 was based upon the invoices for the period 2nd March 2016 and 10th March 2019 as noted at [28] of that Decision. The findings made in [57] to [60] of the Decision to which the present Application relates are based upon the invoices provided for the period from 4th April 2016 to 31st March 2019. The table at [56] is a statement of account which includes invoices that were not provided to the tribunal that made the determination in case reference CAM/oomf/PHI/2019/0010.
14. The Decisions record what amounts were outstanding at the time they were made. An Occupier is liable for the total Water Charge incurred. The Decisions only affect the way the Water Charge is paid by the Occupier year by year not the total amount of liability.
15. The Decision to which the present Application relates does not change the determination in case reference CAM/oomf/PHI/2019/0010 as regards an Occupiers total liability.

Ground 2

16. The Tribunal addressed the issue raised by the Applicants regarding Water Resale Order 2006 at [75] and [76] of its Decision.
17. As was noted in past decisions (CAM/oomf/PHI/2019/0010 and CAM/oomf/PHC/2020/0007), that due to faulty meters, water leakage and the failure by Thames Water to invoice the Respondent regularly, the Water Charge was not known or had not been calculated when the Service Charge was demanded. As a result, the Water Charge for the period 1st April 2019 to

31st March 2020 payable in the year 1st April 2020 to March 2021 was not demanded at the same time as the Service Charge for that period.

18. The Water Resale Order 2006, Article 9(1), requires the Re-seller to inform the Purchaser of the charges which are payable in respect of any supply or service and how the charge has been calculated. Article 9(2) states that if the Purchaser so requests in writing the Purchaser shall furnish the purchaser in writing with the following information:
 - (a) all information used by the seller in calculating the charges referred to in paragraph (1) including the charges payable by the Re-seller to the relevant undertaker or licensed water supplier and
 - (b) the method by which the Re-seller has calculated the charges.
19. In the email dated 24th January 2021 the Site owner stated that the total amount owed for the water bills covering the period from 20th September 2018 to the 23rd November 2020 totalled £57,051.17 and that that sum had been paid to Thames Water by East Sussex Mobile Homes Ltd, the Site Owner and Re-seller. It was also stated that this sum divided equally between 55 homes means the total owed per home is £1,037.29. No Water Charge was demanded or payable for the period in issue until this email and the individual letters to the Occupiers were sent.
20. The Tribunal was of the opinion that this information complied with Article 9 (1) and (2) (a) and (b) of the Order in that it stated:
The total charges demanded (£57,051.17) by the relevant undertaker or licensed water supplier (Thames Water) and paid in total by the Re-seller (East Sussex Mobile Homes Ltd) to the relevant undertaker or licensed water supplier (Thames Water). The period over which the charges were incurred (20th September 2018 to the 23rd November 2020) and the method by which the charges have been calculated (equally between 55 homes being £1,037.29 per Occupier). The period in which the amount was to be payable was also stated and was one of the issues before the Tribunal.
21. The Order does not require the Re-seller to provide copies of the invoices, although this might be done as a means of providing the necessary information. However, there is a provision which requires the invoices to be produced under paragraph 22 (b) (ii) of the Written Agreement but there is no penalty for failing to provide the requisite information within a specified time.

Conclusion

22. The Tribunal's Original Decision was based on the evidence and submissions before it and the Respondent has raised no new legal arguments or additional evidence in support of the application for review or permission to appeal. The Tribunal has decided not to review its Original Decision and refuses permission to appeal to the Upper Tribunal.