



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

Case Reference : **CHI/24UJ/PHC/2016/0020**

Property : **84 Church Farm Close
Dibden
Southampton
SO45 5TG**

Applicant : **Miss Pamela Burt**

Representative : **In person**

Respondents : **The Berkeley Leisure Group Limited**

Representative : **Miss Kirstie Apps
Stephens Scown LLP**

Type of Application : **Determination of any question arising
under the Mobile Homes Act 1983 or
agreement to which it applies.**

Tribunal Members : **Mr B H R Simms FRICS
Judge P R Boardman MA LLB**

**Date and venue of
Hearing** : **19 May 2017
Havant Justice Centre**

Date of decision : **05 June 2017**

DECISION

THE APPLICATION & BACKGROUND

1. The application dated 12 December 2016 seeks a determination as to the amounts properly payable by way of charges for the supply of electricity and sewage disposal by an occupier of a Park Home under section 4 of the Mobile Homes Act 1983 (“the Act”). The Applicant is the occupier of the premises and the Respondent is the Site Owner.
2. Directions were issued dated 20 December 2016 requesting statements from the parties and arranging for an oral hearing on a date to be agreed in April/May 2017.

SUMMARY OF DECISION

3. The parties have agreed the issues in respect of the sewerage costs and charges and a copy of that agreement is attached as an Appendix.
4. The Administrative or standing charge for electricity for the Premises for the 2 year contract period 2015-2017 is 12.54p per calendar month.

WRITTEN STATEMENT

5. The Tribunal had before it a copy of the Agreement under Mobile Homes Act 1983 (“the Agreement”) which commenced on 24 July 2006. The relevant provisions will be identified in connection with each issue as required.

INSPECTION

6. As agreed and Directed the Tribunal did not inspect the premises.

THE LAW AND JURISDICTION

7. The tribunal has power under section 4 of the Act to determine any question arising under the Act or any agreement to which it applies, and to entertain any proceedings brought under the Act or any such agreement.

REPRESENTATIONS AND EVIDENCE AT THE HEARING

8. In accordance with Directions both parties made written submissions and the Applicant prepared a bundle of documents for the hearing. The Tribunal had the Application and Directions and a copy of the Agreement. The Respondent supplied a skeleton argument.
9. Initially the Tribunal agreed with the parties that the three express issues to be determined were:
 - a) Whether the monthly pitch fee payable by the Applicant includes the cost of waste disposal,
 - b) Whether the Applicant is responsible for paying maintenance costs in respect of the private sewerage plant, and

- c) Whether the current method used for calculating the apportionment of the electricity administration charge is correct.
10. The parties had taken a short time before the hearing to attempt to agree some of the issues. On hearing submissions the Tribunal believed that there was a probability that if further time was allowed an agreement could be reached and accordingly allowed further time for discussion. Following these discussions the parties were able to agree a solution in respect of issues a) and b) above and these matters were withdrawn.
 11. A copy of the handwritten settlement agreement completed by the parties is attached as an Appendix.
 12. This left issue c), the administrative charge for electricity, to be determined.
 13. Miss Burt explained that on a document headed 'Breakdown of Charges' issued by Npower the charge for administration is shown as £9.91 which, if divided by the number of residences on the Park [83], is 12p [plus VAT total 12.54p] whereas she is charged 34p. It had already been explained to her that the difference is because the Respondent adds together all the electricity administration charges for all the Parks under their control which is shown on the Npower bill to them and then divides this by the total number of residents stated to be 3,500. Miss Burt states that, as the actual cost for Church Farm Close is known, she can't understand why this figure isn't used rather than a global figure for all the Parks. She has no knowledge of the other Parks but it would seem reasonable that each Park should also be charged the admin charge allocated to their own Park.
 14. Miss Burt confirmed that she had an electricity meter to record the number of units used for which she was charged 10.1p per unit. She had no argument with this figure.
 15. Mr Stephen Drew, Company Secretary for the Berkeley Leisure Group Ltd, submitted a witness statement and gave evidence in response to questions.
 16. He confirmed that he negotiated a new contract for electricity supply every two years and Npower was the authorised supplier to all their Parks. The final figure negotiated is the best possible price for the residents. The unit price for the 2015 – 2017 contract is 10.084p which is rounded to 10.1p, a figure less than the previous contract.
 17. The admin fee is set at 34p or £3.84 per year, a figure less than the previous contract. This calculation is taken from the total of administration charges itemised in all the bills under the single supply divided by 3,500 (the number of homes) and then by 12 to arrive at a monthly charge. There is no question of the Site Owner making a profit.
 18. Under questioning from the Tribunal and the Applicant Mr Drew explained that he liked to advise the residents of the electricity charges as soon as possible after he had concluded the negotiations with the supplier and therefore had to use the global figure.

19. However Mr Drew admitted that he would have had the details of the individual admin charge for each Park at that time so the actual figure could be used. His only explanation for using the global figure was this was the way he had always done it and it was easier.
20. Miss Apps questioned whether the Tribunal had jurisdiction to consider this issue as it is not a question under the Act but rather regarding the Ofgem decision¹. She referred the Tribunal to the Ofgem decision contained within the bundle but failed to identify how the calculation would fall foul of this.

CONSIDERATION

21. Firstly the Tribunal consulted the Agreement with the Occupier. In Part IV Express Terms paragraph 3 b) states that The Occupier is “*To pay and discharge...charges in respect of electricity gas water telephone and other services.*” There can be no doubt that the charge for electricity is in addition to any other fee paid by the Occupier.
22. Secondly the Tribunal consulted the Ofgem decision Appendix 1 paragraph 3. “*...where a standing charge is payable to the authorised supplier...the standing charge shall be charged by the reseller to the persons to whom electricity... is resold on those premises pro rata with the amounts payable for...electricity.*”. The common meaning of *pro rata* is proportionally so the Ofgem decision allows the reseller, here meaning the Respondent, to apportion the standing charge to each resident.
23. It is the method that is in dispute. The actual breakdown of the charges for Church Farm Close identifies the administration charge and the Respondent could not provide any tangible reason why this actual figure should not be used.
24. The current method penalises those Parks which are more administratively easy for the authorised supplier and to benefit those Parks which are more administratively difficult. There is no reason why Miss Burt should be charged a higher figure just because it is easier for the Respondent to calculate.
25. We therefore have no hesitation in confirming that the correct method for the contract period 2015-2017 is to take the administration charge for Church Farm Close and divide this by 83, the agreed number of residents. In her Representations Miss Burt did not take account of VAT so the correct mathematics is $\pounds 9.91/83 = 0.1194 + 5\% 0.00597 = 0.1254$ or 12.54p.

Dated: 05 June 2017

Mr BH R Simms (Chairman)

¹ The Gas and Electricity Markets Authority , Maximum Retail Price Provisions, A decision document, January 2002

APPENDIX

CY1/24UJ/PHC/2016/0020

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BERKELEY LEISURE
GROUP LTD

SETTLEMENT AGREEMENT.

BY CONSENT IT IS ORDERED THAT:

All further proceedings in relation to the sewerage costs on Church Farm Park, nr Dibden, Southampton be stayed upon the terms as set out below:

① The Tribunal has made no determination in relation to the 2 issues raised by the Applicant, namely (1) whether the monthly pitch fee payable by the Applicant to the Respondent includes the cost of waste disposal and (2) whether the Applicant is responsible for paying maintenance costs in respect of the private sewerage treatment plant.

② The Respondent agrees to pay the Applicant the sum of £1,200 and the sum of £1,600 (being a contribution towards her costs) totalling £2,800 by 4 pm on

7 June 2017.

(3) The Respondent agrees to pay the remaining 82 homeowners the sum of £1,200 by 4 pm on 7 June 2017.

(4) The Parties agree that the Respondent's payment to the Applicant of £2,800 is paid in full and final settlement of all matters raised by the Applicant in these ^{proceedings} in respect of the sewerage costs on Church Farm Park Nr. Didden Southampton - from 1 January 2008 to 31 May 2017.

(5) For the sake of clarity, the Applicant and the remaining 82 homeowners will be charged for water charges only from 1 June 2017 to 31 December 2017 under this settlement.

(6) The Respondent shall consult with all homeowners on Church Farm Park on the way in which the cost of providing the sewerage services shall be recovered from the homeowners from 1 January 2018.

⑦ The Respondent shall reimburse any homeowners who has paid the water and Sewerage Charge in full for the year commencing 1 January 2017 all monies relating to this charge due for the water charge element.

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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.