FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UK/PHC/2018/0016
Property	:	Wickens Meadow, Rye Lane, Dunton Green, Sevenoaks TN14 5JB
Applicants	:	Mrs Julie Truzzi-Franconi (6) Mr S Copon and Mrs H Bailey (12), Mr TE Talbot (14), Mr E Peacham (15), Mr and Mrs P Iline (16), Mr G Myers and Mrs Hayes (17) Mr Terry Payne and Mrs Catherine Payne (20) Mrs Joan Roake (33) Mr Bob Hoall and Mrs Hoall (35)
Representative	:	In person
Respondents	:	Wyldecrest Parks Management Ltd
Representative	:	Mr David Sunderland (Director)
Type of Application	:	Questions under agreements to which the Mobile Homes Act 1983 applies
Tribunal Members	:	Judge M Loveday Mr R Athow FRICS MIRPM
Date/venue of Hearing		20th March 2019 Sevenoaks, Kent
Date of Decision		16th May 2019

DECISION

© CROWN COPYRIGHT 2019

Introduction

1. These are applications for the determination of questions arising under agreements to which the Mobile Homes Act 1983 ("the Act") applies. The applications relate to nine park homes at Wickens meadow, Rye Lane, Dunton Green, Sevenoaks TN14 5JB. The Applicants are the occupiers of the nine pitches. The Respondent is the site owner.

2. The issues can be summarised as follows:
   - Breach of the terms implied into the agreements by paragraphs 22(b)(ii) and (iii) of Part I of Sch.1 to the Act.
   - Whether charges are payable under the agreements in respect of water, sewerage and/or gas and if so the amount of such charges.
   - Whether the agreements include a right for each occupier to park one vehicle in an allocated parking space in the main car park of the site, and if so whether the Respondent has interfered with that right.

3. The applications arose from, but were heard separately to, nine applications by the site operator for review of pitch fees (CHI/29UK/PHI/2018/0033-40). The Tribunal gave its decision in the pitch fee reviews on 16th April 2019.

4. A hearing took place on 20th March 2019. Ms Truzzi-Franconi (6 Wickens meadow) appeared for the Applicants. The Respondent was represented by its Director, Mr David Sunderland. At the end of the hearing, the Tribunal invited further written representations in relation to two authorities which were referred to during the hearing. Both parties felt able to make such submissions. The Tribunal reached its decision in the light of the material presented to it at the hearing and the additional written submissions.

Inspection

5. The Tribunal inspected the site for the purpose of the pitch fee reviews on 11th October 2018. Having already inspected, neither the Tribunal nor the parties in the present application (who were the same as those in the earlier matter) considered it was necessary to do so again.

6. Having carried out the earlier inspection, the Tribunal, need not repeat its description of the premises, but reference should be made to the decision in CHI/29UK/PHI/2018/0033-40 for details of Wickens Meadow.

The pitch agreements

7. Ms Truzzi-Franconi first referred to the relevant terms of the pitch agreements for the nine Applicants:
    a. There is a Written Statement of Terms under s.1(2) of the Act in respect of 6 Wickens Meadow. This is on an older-style *pro-forma* and it was apparently made in 1984 between the then site operator Mr P Wickens and a Mr R E Martin. The form of agreement has only partly been completed.
    b. There is another modern form Written Statement of Terms under s.1(2) of the Act for 12 Wickens Meadow made between John Wickens and Sheila Hunt. The agreement was signed on 1st November 2011 began on the same date.
    c. The hearing bundle included two pages from a Buyer's Information Form under Sch.1 to the Mobile Homes (Selling and Gifting) (England) Regulations 2013 for 17 Wickens Meadow at the hearing, a rather more complete copy of the Buyer's Information Form was produced which suggested it had been prepared in 2015.
    d. There is a Written Statement of Terms in a modern printed form for 20 Wickens Meadow made between Mr J Wickens and Terry and Catherine Payne. It was signed by the parties on 19 and 27 November 2015. There is a plan attached to the Statement with detailed measurements of the pitch itself. The plan also shows with an arrow with the words "TO CAR PARK". The arrow points

in the direction of the larger north eastern car park although the car park itself is not shown on the plan. There is also a written Buyer's Information Form dated 7th September 2015 signed by a Mr W Brinkley.

e. There is an older-style Written Statement of Terms for 33 Wickens Meadow made between Percy Wickens and Wilfred and Vera Marsden. The Statement suggests the agreement commenced in January 1984, but the next review date is given as 1 February 1991, suggesting the Statement itself may in fact have been prepared in 1990/1.

f. The hearing bundle included a wholly illegible copy of an older-style Written Statement of Terms for 35 Wickens Meadow. At the hearing, the Applicants produced a better (but still feint) copy, which stated that agreement commenced on 9th May 2014.

g. There is no evidence of Written Statements of Terms or other written agreements for 14, 15, or 16 Wickens Meadow. Ms Truzzi-Franconi suggested the arrangements between the owner and the occupiers were verbal. The former site operator, Mr Wickens, was "not good with documents".

8. When it acquired the site on 16th November 2015, the Respondent was given copies of the contracts and agreements with occupiers on the site (see letter dated 15th December 2015). Mr Sunderland confirmed at the hearing he had not seen any other Written Statements of Terms or other agreements for the nine pitches, other than those provided by the Applicants to the Tribunal.

Issue 1: Breach of Implied Terms

9. Paragraph 22(b) of Part I of Sch.1 to the Act states that the owner shall:

> "(b) if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of—
> ...

(ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and
(iii) any other charges, costs or expenses payable by the occupier to the owner under the agreement."

The Applicants' case

10. The first category of documents which are sought relates to a £10 per month gas service charge (£30 per quarter). Ms Truzzi-Franconi stated that this was included in a quarterly invoice dated 1st February 2018 where it was described as an "ADMIN CHARGE". The next quarterly invoice dated 1st May 2018 described it as a "STANDING CHARGE". The charge appeared (together with VAT) in later quarterly statements. The Applicants required documentary evidence in support and explanation of this charge. Ms Truzzi-Franconi referred to a letter from occupiers to the Respondent dated 31st May 2017, which raised the £10 per month gas service charge as "an issue which the residents would like explained". The point was significant, because certain charges of this kind could not be passed on to occupiers: Britaniacrest v Bamborough [2016] UKUT 0144 (LC).

11. The second category relates to more general gas charges. On 7th September 2018, the LPG gas prices increased significantly. On 21st September 2018, Mr Roake (on behalf of his mother at 33 Wickens Meadow) formally requested copies of invoices and a copy of the fixed price contract citing paragraph 22(b) of Part I of Sch.1 to the Act. He followed this with reminders dated 10th, 19th and 25th October 2018. In her closing submissions, Ms Truzzi-Franconi submitted it was clear the request came from all the occupiers, not Mr Roake, since they were copied into the email.

12. The third category was water and sewerage charges. Ms Truzzi-Franconi referred to the letter from occupiers dated 31st May 2017, which disputed several charges, including the water charges. This information had not been forthcoming.

The Respondent's case

13. At the hearing, Mr Sunderland accepted that the Tribunal had jurisdiction under paragraph 22(b) to make a determination of breach, and to order production of documents.

14. Mr Sunderland took three points in relation to the requests. First, there was the request made by Mr Roake. The Act required the owner to produce information in response to a request "by the occupier". Mr Roake was not the occupier of 33 Wickens Meadow. It was his mother who was the occupier. This was not a purely technical point, since the information was personal information covered by Data Protection/GDPR considerations. Secondly, there had been no formal request for "documentary evidence in support of and explanation of" the £10 Gas Standing Charge that complied with paragraph 22(b)(2). The letter of 31st May 2017 simply asked for an "explanation" of the £10 per month. Thirdly, there had been no formal request for information about water and sewerage charges.

15. The Respondent argued that in any event all the documentary evidence in support and explanation of the water and sewerage charges had been provided, and that this was exhibited in the hearing bundle. These included water supplier bills and the calculation of the monthly charge being made for water and sewerage supplied to the owner by the authorised supplier. The owner simply passed on these charges to the occupiers without any additional cost being added (as required by OFWAT maximum resale price provisions). As to the gas bills, each home had a separate meter and the Applicants had produced three invoices from its supplier Avavi Gas dated 18 December 2017. These related to the three LPG tanks on site, and they specified a monthly standing charge for the period 1 January-31 March 2018. No further information was required. The covering letter from AvantiGas had not been provided on data protection grounds.

Discussion

16. The procedural requirements of paragraph 22(b) are threefold, namely that (i) an "occupier" has (ii) "requested" (iii) documentary evidence in certain defined charges.

17. Of the three categories of documents complained about, the Tribunal finds as follows in respect of the requests:
    a. The request in relation to the £10 per month gas service charge was allegedly first made in the letter dated 31st May 2017. The letter was apparently signed by various "occupiers" within the meaning of the Act. However, the letter does not expressly request "documentary evidence" of any kind. What it asks for is for an "explanation" of the Gas Service Charge. The Tribunal considers a request for documentary evidence under paragraph 22(b) must at least be clear enough to convey to the recipient that the occupier requires such "documentation" either by using these words or (as Mr Roake has also done) by referring specifically to paragraph 22(b) of the Implied Terms.
    b. The request in relation to the LPG gas prices was allegedly made by Mr Roake in his emails of 21st September, 10th October, 19th October and 25th October 2018. The Tribunal rejects the suggestion by the Applicants that copying the email <u>to</u> occupiers indicated to the Respondent that the request was <u>from</u> them. That strains the meaning of the word "by" in paragraph 22(b) to breaking point. But the Tribunal observes that Mr Roake expressly stated in his email of 21st September 2018 that he was "writing on behalf [sic] my mother Mrs Joan Roake No.33 Wickens Meadow and the above mentioned". The "above mentioned" were the occupiers of 6, 12, 15, 16, 17 and 15 Wickens Meadow – namely seven of the Applicants in this matter, each of whom were "occupiers" of mobile homes within the meaning of then legislation. Mr Roake was expressly acting as agent, and there is nothing in the Act which suggests a request cannot be made by an agent. The request referred to the relevant provision

of the Act and required the provision of "documentary evidence". The request for documentary evidence of the gas charges therefore complies with paragraph 22(b) of the Implied Terms.

c. The request in relation to water and sewerage charges is again said to be contained in the letter dated 31st May 2017. Once again, the letter came from "occupiers" within the meaning of paragraph 22(b) (see above). But the Tribunal agrees with the Respondent that it contains no "request for documentary evidence" in relation to water rates and sewerage charges. The letter does refer to advice received by the Applicants "from their "Individual Buildings Insurers" about water charges, but it does not then go on to request any documentation about these charges. The request for this category of documentation does not therefore engage paragraph 22(b) of the Implied Terms.

The Tribunal's finding in relation to the first category of documents is perhaps otiose. Close consideration of Mr Roake's request for documentation was that they requested documentation about the "invoices and fixed price contract". As stated above, the invoices of December 2017 invoices from AvantiGas included details of the £30 monthly charge, so Mr Roake's request covered these items as well.

18. The only category of documentation properly requested by occupiers is therefore evidence of LPG gas prices. Did the Respondent "provide" this documentation to the occupiers (free of charge)? The requirement in the Act is to provide "documentary evidence in support and explanation" of the gas charges. The Tribunal considers that in the circumstances of this case, it was insufficient for the Respondent simply to provide invoices from AvantiGas for one quarter. As Mr Sunderland explained, the only possible charge that the Respondent could pass on to occupiers was the charge made to it by AvantiGas. The AvantiGas invoices themselves were therefore meaningless as "documentary evidence and explanation" of the occupiers' gas charges. At the very least, paragraph 22(b) required the Respondent to provide

details of its agreement with AvantiGas, and Mr Roake's request specifically sought evidence of the "fixed price Cont[r]act". The Tribunal therefore considers that in this respect the Respondent has not complied with paragraph 22(b) of the Implied Terms.

19. However, that is not the end matters. Paragraph 22(b) only applies to certain specified charges, which include a charge for gas "payable … under the agreement". The "agreement" here means the pitch agreement. Tribunal concludes below that the none of the Applicant's pitch agreements include any obligation to pay a separate gas charge. It follows that despite the failure to provide the gas supply contract documentation, there is no breach of paragraph 22(b).

Issue 2: Water and gas charges

20. The substantive issue in relation to water and gas charges is whether they are payable or not under the relevant agreements.

21. It is common ground that the Applicants were not charged for water and sewerage until recently. Although no copies of water invoices were included in the hearing bundle, it appears that the Respondent introduced a charge from June 2018. The Respondent has provided a spreadsheet for the period 17th October 2017 to 17th October 2018 showing that over the 12-month period, South East Water supplied water to the site. There were monthly fixed charges of £2.58-£2.64, whilst water usage charges varied from £48.06 per month a significant (unexplained) credit of £277.93. The Tribunal is asked to determine whether water and sewerage charges can be levied under the pitch agreements. It should be said that the above figures suggest that the monthly water charges for each mobile home may be fairly modest and in the region of perhaps £3-4 a month.

22. As to gas charges, before 2017, each mobile home was supplied with bottled gas, and each occupier was responsible for buying their own gas bottles. However, in 2017, the Respondent installed a new centralised

tank fed-LPG system. Details of the system need not be spelt out here. But following this, the Respondent began to levy separate gas charges on the Applicants. Copies of these invoices have been provided in the hearing bundle, and they include both a standing charge and a charge based on the number of units of gas consumed.

23. The material express provisions of the pitch agreements are as follows:

    a. The Written Statement of Terms for 6 Wickens Meadow includes the following Express Term on the party of the occupier:

    > "(4)(b) 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 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".

    It should be noted the copy provided for the Tribunal has a line in manuscript through the word "water" (on both occasions it appears in the provision).

    b. The Written Statement of Terms for 12 Wickens Meadow is again in modern form. Section 7 of Part 2 lists "Water" as services included in the pitch fee. The word "~~Sewerage~~" also appears, but again struck out in manuscript. Section 9 listed only one "additional charge", namely "OUTSIDE TAP £1 PER MONTH".

    c. The Buyer's Information Form for 17 Wickens Meadow confirms that "Water supply" and "Sewerage" are included in the pitch fee. The Documents section at paragraph (v) suggests that "Water" and "Sewerage" charges are "N/A".

    d. The Written Statement of Terms for 20 Wickens Meadow has similar provisions to 12 Wickens Meadow. The services listed in Section 7 in Part 1 include "Water" and "Sewerage". Section 9 of Part 2 makes no mention of water as an "additional charge" payable by the occupier. The Buyer's Information Form dated 7

September 2015 confirmed that the previous pitch agreement included "WATER SUPPLY & SEWERAGE" in the pitch fee and that "Water" was "INCLUDED IN RENT".

e. The Written Statement of Terms for 33 Wickens Meadow includes a modified form of the provision referred to above:

   "(3)(b) 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 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".

f. The Written Statement of Terms for 35 Wickens Meadow has similar provisions to those in the agreement for 12 Wickens Meadow. Section 7 of Part 2 lists both "Water" and "Sewerage" as services included in the pitch fee, although "water" is ringed in manuscript.

g. There is no evidence of Written Statements of Terms or other written agreements for 14, 15 and 16 Wickens Meadow.

The Applicants' case

24. The Applicants' case is that that water and sewerage has never been charged for separately, and that there is no right to do so under the various pitch agreements. The occupiers were entitled to expect that these charges were part of the pitch fee. The issue was a pure matter of contract.

25. There were written or oral agreements with the previous site owner that there should not be any charge. The Written Statements of Terms for 12 and 20 Wickens Meadow were clear that water was included in the pitch fee. The Statement for 6 Wickens Meadow had been annotated in manuscript to strike out the word "water", and it was equally clear no separate charge could be made. As for 35 Wickens Meadow, the words in the agreement were feint, but they were equally clear, and the

Respondent accepted the occupiers did not have to pay separate water charges.

26. That left 33 Wickens Meadow and the pitches where there was no documentary evidence (14, 15 and 16). Although some of the Applicants could not produce evidence of their own arrangements, the Written Statements of Terms which had emerged showed that the pitch fees included generally included water charges.

27. To support the argument that there were express oral agreements between occupiers and the previous site owners about charges, Mrs Truzzi-Franconi sought permission to call the oral evidence of Mr Peacham (15 Wickens Meadow). Mr Sunderland objected on the ground that paragraph 7(d) of the Directions given on 20th November 2018 had required the Applicants to serve witness statements by 7th December 2019. The late decision to call new evidence of fact without any witness statement would be highly prejudicial. In any event, Mr Peacham had been sitting in the hearing and his evidence would inevitably be affected by that. Ms Truzzi-Franconi contended that the evidence would be material to the matters before the Tribunal, that it had only become apparent at the hearing that the oral agreements were of significance, and she had been unwell during the relevant period that the statements should have been considered. After rising briefly, the Tribunal indicated at the hearing that it would not allow Mr Peachey to give oral evidence. It was not fair or just to allow in the new evidence. There had been no proper explanation as to why a witness statement had been given, the additional time taken to deal with a witness who had not prepared a witness statement. The prejudice to the Respondent was not one that could be easily resolved with a short adjournment, since they had no witness statement to read. The resources of the Tribunal in a one-day hearing would be strained by the additional time taken to deal with evidence in this way.

28. Returning to the arguments, the Applicants further relied on the definition of "pitch fee" in paragraph 29 of the Implied Terms:

"'pitch fee' means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, <u>but does not include amounts due in respect of gas, electricity, water, sewerage or other services</u>, unless the agreement expressly provides that the pitch fee includes such amounts".

29. As far as the gas charges were concerned, essentially the same arguments applied. In addition, the gas invoices rendered by the Respondent referred to the £30 quarterly charge as an "Admin Charge". Such charges were not properly recoverable from the occupiers: see <u>Britaniacrest</u> (supra).

The Respondent's case

30. The Respondent accepted that three of the Written Statements of Terms showed the cost of water and sewerage as included in the pitch fee (12, 20 and 35). They would not be charged for water and sewerage. Mr Sunderland did not agree this applied to any of the other pitches:
    a. He accepted the Written Statements of Terms for 6 Wickens Meadow was a genuine document, but the manuscript scoring out of printed terms of clause 4(b) was unclear. This should be read as though the printed words applied, and the occupier was under an express obligation to pay for "water rates" and "charges in respect of ... water ... services".
    b. 14, 15 and 16 had no Written Statements of Terms (see below).
    c. The Buyers Information Form for 17 Wickens Meadow was of no evidential value. It was not an "agreement" within the meaning of the Act, and it was not a document which went to the site owner.

31. If there were no express terms providing for additional water or sewerage charges, Mr Sunderland submitted that the Implied Terms prevailed. Paragraphs 29 and 21 (b) of the Implied Terms were clear in their effect. If under paragraph 29, "the agreement" did not "expressly

provide [...] that the pitch fee includes such amounts", there was an obligation under paragraph 21 to pay "gas" and "water" charges to the owner. The Implied Terms therefore effectively applied a presumption that the occupiers were liable to pay separate water and other charges. Mr Sunderland relied on the Upper Tribunal decision in Wyldecrest Parks (Management) Ltd v Santer [2018] UKUT 0030 (LC) to support this proposition.

32. As far as the gas was concerned, this was a *bona fide* charge. The Respondent made no profit on the resale of gas. The £30 recurring charge was a charge made by the gas supplier, not the Respondent, and it had simply been mislabelled as an "administration charge". Mr Sunderland referred to invoices from AvantiGas to this effect. The other variable element of the charge was based on consumption, and again, the Respondent made no profit on this. But essentially, the gas charges were payable for the same reasons as the water charges.

Discussion

33. The Tribunal does not agree with the analysis of the Act at the heart of Mr Sunderland's submissions. The Implied Terms do of course apply to every regulated mobile home agreement, and they prevail over any express terms of such an agreement if they are in conflict: see s.2(1) of the Act. Moreover, the definition of "pitch fee" in paragraph 29 of the Implied Terms certainly does expressly refer to "amounts due [under the agreement] in respect of gas, electricity, water and sewerage". But the words which follow are crucial, and they plainly refer to a provision covering the composition of the pitch fee. If the pitch agreement "expressly provides" that the pitch fee partly includes the amounts payable by the occupier to the owner for gas etc, the words "but does not" fall away. The "pitch fee" is then deemed to include the gas charges etc. What paragraph 29 does not do is to supply the required 'express provision' which may or may not trigger this event. And in any event, the 'express provision' has nothing to do with an obligation to pay a charge for gas, etc., which is the central issue in the present matter. The

'express provision' referred to is one which expressly treats any obligation to pay a charge as part of the pitch fee. The limited effect of paragraph 29 was explained by the Upper Tribunal in Britaniacrest (supra) at paragraph 17:

> "The Act is therefore quite clear: the pitch fee does not include any charge for gas, electricity and other services unless the agreement expressly says so".

It follows there is no presumption that the occupiers are liable to pay a separate water charge in the event the pitch fee agreement does not say otherwise.

34. Furthermore, paragraph 21(b) of the Implied Terms does not impose an implied obligation to pay a services charge to the site owner. What the paragraph says is that if there is any such obligation, the Implied Terms will supply a mandatory obligation for the occupier to pay the charge. A good example of such a charge appears in the Written Statement of Terms for 12 Wickens Meadow, where at section 9 of Part 1 there is an obligation for the occupier to pay an "additional charge" of £1 per month for an outside tap. Paragraph 21(b) is engaged by this provision, and the occupier of 12 Wickens Meadow must pay the tap fee of £1 a month. But paragraph 21(b) cannot be used to create an obligation to pay a tap fee if it did not already appear in the pitch agreement.

35. Equally, the Tribunal rejects the 'implied terms' approach advanced by the Applicants. If express terms do not appear in the Written Statement, they are unenforceable: see s.1(5). A written pitch agreement is "exhaustive" of the terms between the parties and excludes "any collateral oral contracts": see Crittenden (below).

36. It follows that the Tribunal's approach is to examine each pitch agreement to see whether the Applicants are liable to pay separate water charges "under the agreement".
    a. In respect of 6 Wickens Meadow, the printed terms include an obligation to pay "water rates" and charges for "water". An

identical provision (numbered 3(b) in that pitch agreement) was considered in Greenwood and another v P R Hardman & Partners [2017] EWCA Civ 52; [2017] 4 WLR 59, which Mr Sunderland referred to in his submissions. The Court of Appeal found that such a covenant did not create any obligation for the occupier to pay charges to the site owner: see paras 45-46. Moreover, in this form, the word "water" in the printed text has been crossed out twice. On balance, the Tribunal finds this was amended in the original Written Statement of Terms. There are other slightly amateurish amendments in the copy provided (e.g. the number "5" has been corrected throughout to "6" and 6), consistent with Ms Truzzi-Franconi's description of the former site owner. The Tribunal does not accept that there is any elevated standard of proof required when parties amend a printed document in manuscript. It follows that the Written Agreement for 6 Wickens Meadow also deliberately excluded any obligation for the occupier to pay the owner a water charge. There is no mention of any obligation to pay a gas charge in the agreement for 6 Wickens Meadow.

b. In respect of 17 Wickens Meadow, there is no copy of any Written Statement of Terms. It may well be that no such agreement ever existed, or that it has been lost. In any event, the only evidence of the terms of the agreement is the Buyers Information Form. The Tribunal accepts the criticisms made about the document. It is not a Written Statement of Terms within the meaning of the Act. It is at best secondary evidence of an oral or written agreement made some time before. It was not produced by the parties to the agreement, but by the vendor of the pitch to give information to the purchaser. At best, it is secondary evidence of the terms of the terms of a missing agreement. The form expressly states that water and sewerage were included in the pitch fee, which is inconsistent with any liability to pay a separate charge for these items. But even if one ignores this document as an inadmissible aid to construction,

there is simply no evidence of any express contractual obligation for the occupier to pay a charge to the site owner for water.

c. In respect of 33 Wickens Meadow, the Written Statement of Terms includes a provision at clause 3(b) in precisely the same terms considered by the Court of Appeal in Hardman (see above). It creates no obligation for the occupier to pay the site owner a charge for water.

d. This leaves the three pitches where there is no documentary evidence. Ms Truzzi-Franconi invites the Tribunal to infer from subsequent actions of the parties over a period of time that there would be no separate charge for water. The Tribunal does not accept this is a basis for implication of a term, although it might give rise to an estoppel by convention. But in any event, there is no evidence that the pitch agreements for 14, 15 and 16 Wickens Meadow (whether oral or written) included any obligation to pay a separate water charge.

37. Although a great deal of discussion took place at the hearing about the gas charges, the approach is essentially the same as with water charges. The question is whether for each pitch a separate gas charge is payable "under the agreement".

38. It is not entirely surprising that none of the Written Statements of Terms include any express obligation for the occupier to pay a gas charge to the owner. The factual background is that until recently, each pitch used individual bottled LPG. Communal gas costs have only arisen since a new system was installed in 2017. But dealing with matters fairly briefly, the Tribunal essentially adopts the similar reasoning to its approach to water charges.

a. 6 Wickens Meadow: The provision at clause (4)(b) of Part IV of the Written Statement of Terms does not refer to "gas" charges at all. In any event it is not an obligation for an occupier to pay sums to the owner (see Hardman, above).

b. 12 Wickens Meadow: Section 7 of Part 1 of the Written Statement Written Statement of Terms includes a space for “additional charges”. It does not mention gas charges.
c. 17 Wickens Meadow: the only available evidence, namely the Buyer’s Information Form (Documents page) suggests gas is paid for “upon delivery of cylinders”. But there is simply no evidence of any agreement to pay a separate charge for gas.
d. 20 Wickens Meadow: Section 9 of Part 2b of the Written Statement Written Statement of Terms includes a space for “additional charges”. It does not mention gas charges.
e. 33 Wickens Meadow: The provision at clause (3)(b) of Part IV of the Written Statement of Terms does not refer to “gas” charges at all. In any event it is not an obligation for an occupier to pay sums to the owner (see Hardman, above).
f. 35 Wickens Meadow: Section 9 of Part 1 of the Written Statement Written Statement of Terms includes a space for “additional charges”. It does not mention gas charges.
g. 14, 15 and 16 Wickens Meadow. There is no evidence that the pitch agreements (whether oral or written) included any obligation to pay a separate gas charge.

39. However, the Tribunal rejects the criticism of the standing charge for gas of £30 per month + VAT. The Respondent has produced evidence that this was a bona fide charge made by the gas supplier, and not an additional administration charge levied by the Respondent. But in the event, the Tribunal’s decision on the point is rendered academic by its finding on contractual recoverability.

40. It follows that the Tribunal finds that none of the occupiers are liable to pay the owner a separate charge for gas or water **under their pitch agreements**.

Issue 3: parking

41. The issue essentially arose from a re-organisation of parking arrangements on the site in July 2017.

42. On inspection, the Tribunal was shown the two communal parking areas, which had recently been re-surfaced. The smaller area was by the main entrance to Wickens Meadow in the north-west of the site. The larger parking area was in the north-east corner of the site, next to the two new LPG tanks. Both had clearly marked parking spaces with painted lines on the ground.

43. The relevant terms of the pitch agreements are as follows:
    a. The body of the older-style Written Statement of Terms for 6 Wickens Meadow does not mention parking. But it exhibits Park Rules signed by Mr Martin (apparently in 1984) stating that:

       > "All cars must be parked on the car park. One car only per Mobile Home is allowed unless express permission is given by the owner".

    b. The Buyer's Information Form for 17 Wickens Meadow makes no reference to parking.
    c. The modern-style Written Statement of Terms for 20 Wickens Meadow includes a plan which indicates with an arrow the direction of the "car park" in relation to the pitch. Paragraph 7 of Part 1 of the form states that the services included in the pitch fee extend to "USE OF 1x CAR PARKING SPACE". The 2015 Buyer's Information Form repeats "1x CAR PARKINGS SPACE" is one of "the ... services included in the pitch fee". The printed form also states that Mr Brinkley provided various documents to Mr Payne. At section (iv), the printed words were altered to state that the vendor had provided documentary evidence of charges payable to the owner which included "use of a ~~garage~~, parking space ~~or outbuilding~~ (INCLUDED IN RENT)".
    d. The modern-style Written Statement of Terms for 12 Wickens Meadow does not mention parking.

e. The older-style Written Statement of Terms for 33 Wickens Meadow does not refer to parking.
f. The older-style Written Statement of Terms for 35 Wickens Meadow does not refer to parking.
g. There is no evidence of Written Statements of Terms or other written agreements for 14, 15 and 16 Wickens Meadow.

The Applicants' case

44. The Applicants contended that their pitch agreements included an exclusive right to park a car in a dedicated space in the parking area, and that the Respondent had interfered with that right by removing the signage and allocating some spaces to the exclusive use of other occupiers.

45. Ms Truzzi-Franconi referred to the relevant terms of the pitch agreements:

46. Ms Truzzi-Franconi gave evidence that when she acquired her mobile home in 2015, many parking spaces in both car parks were allocated to individual pitches. In most cases, the allocation was shown by way of a number plate for the relevant car hung on wooden post to the stock fence by the space. Ms Truzzi-Franconi erected a sign for her own car and kept it in the space allocated to 6 Wickens Meadow. There were lots of other signs in a row long the fence. She did not know who put up the other signs, but accepted it was probably other occupiers.

47. In July 2017, the Respondent's contractors commenced work on the larger car park in the north eastern corner of the site. They removed the individual signage and threw her sign into the garden of her pitch. The car park was made smaller because space was given over to the new LPG tanks. There were now only 16 spaces in the larger car park. However, the exclusive allocation of spaces remained in the smaller car park.

48. Ms Truzzi-Franconi stressed the express words of the November 2015 written pitch agreement for 12 Wickens Meadow. The Statement of Terms expressly mentioned a parking space and there would have been no need to do so if it did not grant exclusive use of an allocated space. The pitch fee agreement confirmed the statement in the September 2015 Buyer's Information Form that there was already an established right to a single parking space.

49. As far as the other pitch agreements were concerned, the Tribunal has seen Statements of Terms for 6, 33, 20, the documents for 12 Wickens words showed that "all residents had [a similar arrangement] with the previous owner either as a written or verbal agreement".

50. Ms Truzzi-Franconi further relied on a Site Licence dated 5th August 2011 granted by Sevenoaks DC which included the following condition:

> "**14. Communal Vehicular Parking**
> (i) Suitably surfaced parking spaces shall be provided to meet the requirements of residents and visitors. ... A minimum standard for parking is for residents at least one parking space shall be set aside per mobile home while for visitors one car space per 3 mobiles."

She also relied on the Rules for Wickens Meadow adopted from time to time. The earliest were those referred to in the Statement of Terms for 6 Wickens Meadow. There were also rules from 1987 which stated (Rule 4) that "all vehicles must be parked in the car parks" and that "only one vehicle per mobile home is allowed unless express permission is given by the owner". In 2016, the Respondent issued new Rules which stated at (Rule 4(a)) that "[Vehicles] must be parked in the authorised spaces". These were both consistent with exclusive use of a space and showed that allocated parking was in place well before the Respondent acquired the site on 16th November 2015.

51. In written submissions provided after the hearing, Ms Truzzi-Franconi argued that Crittenden Warren Park v Elliott (1996) 75 P&CR 20 was a very different case. The Recorder found on the facts that there was a

designated parking scheme. That factual finding did not therefore assist the Tribunal.

The Respondent's case

52. Mr Sunderland contended that the basic right under the Act was to "station [a] mobile home on land forming part of the protected site": see paragraph 1 of the Implied Terms. There were, of course, other rights granted to the occupier in return for the pitch fee. The definition of pitch fee at paragraph 29 of the Implied Terms described these as the "use of the common areas of the protected site and their maintenance". "Use" of a "common area" did not give any occupier an exclusive right to park on a particular space.

53. As to the express terms, there was nothing in any of the pitch agreements or other documents produced by the Applicants to suggest the grant of any exclusive right to park in a particular space in the car park. The Applicants' whole case rested on a single reference to "use of 1x car parking space" in the pitch agreement for 12 Wickens meadow. None of the other written Statements of Terms mentioned parking at all.

54. Mr Sunderland accepted that rights could be acquired over time by what he described as "custom and practice" rather than by any formal agreement. But the evidence here did not suggest that any right acquired in this way was a right to exclusive use of a particular space.

55. In any event, the grant of an exclusive right to use a parking space would mean the space became part of the pitch on which the mobile home was stationed. This would have to appear in the Written Statement. The occupiers were able to park in the main car park as they were entitled to the "use of the common areas of the protected site". But they were not entitled to the exclusive use of any parking space.

56. As to the Applicants' other arguments:

    a. The Site Licence was not a contractual term of the agreement between occupier and owner. In any event, the Licence required

1 parking space per home plus 1 visitor space for every 3 pitches. This amounted to 53 spaces in all. The Respondent had provided 53 spaces in accordance with the Licence. The Licence did not require each pitch to be allocated a space. It was simply an allocated number based on Government Model Standards. In any event, a requirement to "set aside" a space did not mean an area had to be dedicated to the exclusive parking use of one of the pitches.

b. The Park Rules did not help at all with the question whether there was exclusivity.

57. As to the verbal arrangements, there was no real evidence of these. In his written submissions after the hearing, Mr Sunderland relied upon the decision in Crittenden Warren Park v Elliott. This found that the written pitch agreement was "exhaustive" of the terms between the parties, and that it excluded "any collateral oral contracts". Since there were no exclusive right to park in any of the written agreements, such rights could not arise informally.

Discussion

58. By section 4 of the Act, the Tribunal's jurisdiction is by statute limited to the determination of a "question arising under … any agreement to which" the Act applies. That "agreement" is the verbal or written agreement under which the Applicant is entitled to station their mobile homes on the site: see s.1(1) of the Act. If that an older agreement has been surrendered or novated, the Tribunal's jurisdiction is limited to dealing with questions arising under the new agreement. Although Mr Sunderland accepted that rights to park could be acquired by what he described as "custom and usage", the Tribunal has no jurisdiction to consider the acquisition of easements or rights *in vacuo*. It may only consider what rights arise under an agreement to which s.1 of the Act applies.

59. It is perhaps most convenient to start with 20 Wickens Meadow, where there is evidence of an express written agreement for use of a parking space. The interpretation of the November 2015 Written Statement of Terms engages the familiar principles derived from cases such as Arnold v Britton [2015] UKSC 36; [2015] A.C. 1619. As to the factual background to the written agreement, there is clear evidence that in November 2015, the occupiers were already using specific spaces in the car park. The reference to "1x CAR PARKING SPACE" in the September 2015 Buyer's Information Form is consistent with this. There is also the evidence from Ms Truzzi-Franconi that when she acquired 6 Wickens Meadow in February 2016 she saw evidence of well-established signage in the car park. The signage evidence is not of course conclusive that there was any existing right to an individual parking space. Moreover, the evidence from Ms Truzzi-Franconi was merely that the signage was put up by occupiers, not the site operator. The Tribunal nevertheless considers the factual background is helpful in ascertaining the meaning of the written agreement. The situation on the ground meant the parties could, had they wished, have readily identified a particular space. Moreover, had they wished to grant a specific right to use a specific space, the existing usage cried out for some clarity about the rights and obligations governing any future use.

60. Turning to the November 2015 Statement of Terms itself, the Tribunal considers the context of the words "USE OF 1x CAR PARKING SPACE" is significant. The words do not appear in sections of the *pro forma* Written Statement of Terms where one would normally expect a permanent and exclusive right to appear. As Mr Sunderland pointed out, an exclusive right to use part of the site might well suggest that that part of the site was part of the plot itself. One might therefore expect a permanent right to use a particular parking space to appear in the "Particulars of the Pitch" section of Part 2 of the Agreement or as an express term in Part 3. Instead, "use of [a] car parking space" is simply listed as one of the "services" included in the pitch fee. As Mr Sunderland again pointed out, the reference to pitch fee "services" in this part of the

agreement derives from paragraph 29 of the Implied Terms, which in turn refers to "the use of the common areas of the protected site". This suggests the parties were simply referring to "use" of part of the "common areas" for parking one car. The phrase then identifies the space by the indefinite article "1x", rather than the definite article "the". This again suggests no specific spaces was allocated to the pitch. Another feature is that the space is not identified in the plan, even though the parties gave precise measurements of the pitch itself. The plan simply indicates the general location of the north eastern "car park", rather than referring to any particular parking space. And as explained above, the use of the infinite article and the plan markings are in the context of an existing situation on the ground that cried out for both clarity of location and clarity of legal rights for any dedicated parking space. For all these reasons, the Tribunal concludes the words "USE OF 1x CAR PARKING SPACE" were not intended to confer any exclusive right to use a particular parking space on the site.

61. As far as the site agreements for 6, 12, 33 and 35 Wickens Meadow are concerned, the Written Statements of Terms make no mention of any right to park. Neither do the Implied Terms in Part I of Sch.1 to the Act confer any such right. Ms Truzzi-Franconi invited the Tribunal to infer that the pitch agreements must have included a dedicated car parking space from (i) the terms of the Written Statement for 20 Wickens Meadow and (ii) evidence of usage. But the Tribunal considers there is no scope for implying terms into the Written Statements of Terms. As explained by Hobhouse J in <u>Crittenden</u> at p.26:

> "... the Mobile Homes Act 1983 ... makes provision in sections 1 and 2 for, in effect, the written agreement to be exhaustive of the terms between the parties ... I merely mention those considerations because they underline that it is the written agreement which contains the agreement of the parties and not any collateral oral contracts".

This statement is not a finding of fact, but a statement of the effect of sections 1 and 2 which is binding on this Tribunal.

62. In any event, the two grounds relied upon by the Applicants for the suggested implied term do not assist them. It was not necessary to include any exclusive right to use a particular parking space to give business efficacy to the pitch agreements. Neither was it so obvious that exclusive rights were granted that this went without saying. The historic usage of the car park did not clearly indicate the grant of exclusive parking rights by the previous site operator.

63. The absence of any original agreement for 17 Wickens Meadow has been commented upon above. The best evidence of the terms of occupation is the Buyer's Information Form. It makes no mention of any rights to park at all. Indeed, the Documents section has the mark "N/A" next to "use of garage, parking space or outbuilding". This is plainly insufficient evidence of a right to park, let alone an exclusive right to park in a dedicated space.

64. As far as the verbal agreements for 14, 15 and 16 Wickens Meadow are concerned, the position is essentially the same. The only relevant terms are the statutory Implied Terms in Part I of Schedule 1 to the Act. There is no scope for implying any other terms.

65. The Tribunal can deal briefly with the two other arguments advanced by the Applicants in this respect:
    a. The various Site Rules do not help the Applicants. They are largely unhelpful on the issue of exclusivity. But the earliest statement of rules that "one car only per Mobile Home is allowed unless express permission is given…" is inconsistent with the existence of exclusive rights to park. There would be no need to make this rule if the pitches had exclusive parking spaces.
    b. The Site Licence condition does not bear the interpretation placed upon it by the Applicants. A parking space can be "set aside" without an exclusive right being granted tin use it. In any event, the licensor was only concerned with the overall number of vehicles parked on the site. It has no obvious interest in ensuring that spaces are reserved for individual pitches. Indeed,

the contrary could be said to be the case. Exclusive use of spaces is potentially inefficient and might conceivably lead to saturation parking at certain times of the year. But in any event, there is no evidence the parties to the various pitch agreements were aware of the terms of the Site Licence when they entered into their agreements – and indeed it post-dated some of these agreements. The Licence is not of any assistance at all in interpreting the agreements under the Act.

66. On the third issue, the Tribunal determines that none of the agreements to which the Act applies included any exclusive right for the occupier to park a vehicle in any particular allocated parking space. The Respondent has not therefore interfered with that right.

Conclusions

67. The Respondent has failed to provide (free of charge) documentary evidence in support and an explanation of charges for gas payable by Applicants to the Respondent. But for the reasons given above, there has been no breach of paragraph 22(b) of the Implied Terms in Part I of Sch.1 to the Mobile Homes Act 1983.

68. None of the occupiers are liable to pay the owner separate charges for water or gas under their respective pitch agreements.

69. None of the pitch agreements include an exclusive right for the occupiers to park a vehicle in an allocated parking space in the main car park of the site. The Respondent has not therefore interfered with any such right.

Judge M Loveday

16th May 2019

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.