FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/12UG/PHC/2019/0004**
Property	:	19 Merton Park, High Street, Waterbeach, Cambs CB25 9JX
Applicant	:	Paul Edwards (in person)
Respondent	:	Andrew Manson
Representative	:	Barr Ellison LLP [ref STP/RED/MAN069-0003]
Type of Application	:	by a park home occupier for determination of any question arising under the Mobile Homes Act 1983 or agreement to which it applies [MHA 1983, s.4]
Tribunal	:	Judge G K Sinclair
Date of determination	:	9th September 2019
Amended under slip rule		18th September 2019

DECISION
following a paper determination

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1. Neither party having asked for an oral hearing, and the tribunal considering the application upon a consideration of the parties' written representations, for the reasons set out below the tribunal determines that :
   a. Insofar as it concerns the production of documents that concern water charges relating to any period before the applicant took an assignment of

the mobile home and benefit of the agreement under the Act (i.e. before 2015) the application be dismissed

b. The respondent site owner has overcharged for water by adding a fee for administration or billing that exceeds that permissible under paragraph 8 of the Water Resale Order 2006 in every subsequent year, namely :

Year	*Sum charged*	*Maximum*	*Excess*
2015–2016 [L]	£41.08	£5.49	£35.59
2016–2017	£40.40	£5.48	£34.92
2017–2018	£46.14	£5.48	£40.66
2018–2019	£10.00	£5.48	£4.52
[L] = leap year		**Total repayable :**	**£115.69**

c. The respondent site owner has failed to provide accurate information to show how the water charges have been calculated; his written submissions comprising merely tables that neither correspond with the water bills that have been disclosed nor, in the year 2017–2018, his actual invoice sent to the applicant for the period May 2017–April 2018

d. As to the validity of the respondent's pitch fee review form dated 20th March 2019 :

i. While the reference to the previous review date of June 2018 is incorrect the calculated 2.5% RPI uplift (February 2018–February 2019), at (B) in section 4 of the form, is accurate

ii. That does not explain the reduction in pitch fee from £124.95 per month to £124.71 per month

iii. The respondent has failed to show how he calculated the figure for the current pitch fee, at (A); a matter of some importance bearing in mind the error in calculating previous pitch fees that the tribunal drew to the parties' attention at paragraph 31 of its decision dated 5th November 2019. In view of the findings at b. above this figure may require recalculation

iv. The recoverable costs, at (C), are inaccurate and not adequately explained

v. By reason of the above the pitch fee review form is therefore invalid and, subject to compliance with the 10% reduction imposed by the tribunal in its decision dated 5th November 2019, the current pitch fee shall remain in force pending the application by either party for determination of the pitch fee for 2019–2020.

Background

2. This is the third application brought by Mr Edwards, who purchased a mobile home and took an assignment of a pitch at the above protected site in about May 2015. In late 2017 he sought answers to various questions which he said arose under his pitch agreement, and these were dealt with in a decision dated 2nd January 2018.[1] Later in 2018 he challenged the site owner's desire to increase the annual pitch fee in line with inflation (as determined by reference to the Retail

[1] CAM/12UG/PHC/0010

Prices Index). That application, determined on 5th November 2018,[2] succeeded and he obtained a reduction rather than an increase in his pitch fee due to a loss of amenity enjoyed by this specific pitch by the entrance to the site.

3. In paragraph 31 of that November 2018 decision the tribunal commented that :

> While not strictly part of the task before the tribunal it notes the figures used in the supplementary statements of account produced at the hearing. Mistakenly, when assessing the percentage increase, Mr Manson's staff failed to deduct the standing charge for water as well as its actual cost before applying the percentage uplift. The standing charge should then have been added back after making this adjustment. The proposed 3.6% increase (which will affect the other pitches but not this) is therefore slightly higher than it should be – and this appears to have been compounded over several such pitch fee increases. That is a matter that Mr Manson must sort out between himself and the residents, but it ought to be a simple arithmetical exercise

4. The applicant now seeks to use that comment to justify an application that the respondent site owner produce statements of account going back as far as 1977[3], in case the error referred to in paragraph 31 of the November 2018 decision is of historic proportions. This is notwithstanding the fact that the applicant took an assignment of the pitch as recently as May 2015 and was aware of and accepted at the time the passing pitch fee.

5. By its directions order dated 7th May 2019 the tribunal, applying the overriding objective, stated that it did not regard the expenditure of time and resources either by itself or the parties in such an exercise to be proportionate and, insofar as the request refers to any period prior to May 2015, the same was refused.

6. The tribunal directed that unless the applicant provided a written explanation why the matters mentioned by him in his application raise valid questions for determination by the tribunal then his application would automatically be struck out under rule 9(1). He did provide an explanation by the required date, and the respondent site owner in turn took the opportunity of sending his own written submissions to the tribunal office and to the applicant.

Material provisions in written statement

7. The written statement begins as a rather vague document, with none of the boxes in Part 1 completed, including the names of the parties, other than the start date of 24th April 2009 (box 3), plot number (box 4), and a reference to an additional charge for "Second car additions car £10:00 per month" (box 9).

8. In Part 3 (Implied Terms) paragraphs 16 to 20 make provision for the pitch fee and the method of changing it annually, at the review date (left blank in Part 1). Written notice of the proposed increase must be served on the occupier at least 28 days before the review date, and the occupier shall continue to pay the existing pitch fee until a new one is either agreed or an order determining the amount of the new pitch fee is made by the court. (These provisions have been overtaken by

[2] CAM/12UG/PHI/2018/0008

[3] Perhaps 1997 was intended

subsequent statutory amendment, for which see below).

Applicable law

9. The relevant principles of law governing the subject of annual pitch fee increases appear in paragraphs 16, 17, & 20 of Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended). The material parts provide as follows :

16. The pitch fee can only be changed in accordance with paragraph 17, either–
    (a) with the agreement of the occupier, or
    (b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17.(1) The pitch fee shall be reviewed annually as at the review date.
(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.
(2A) In the case of a protected site in England, a notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.[4]
(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.
(4) If the occupier does not agree to the proposed new pitch fee –
    (a) the owner may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee;
    (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and
    (c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.
(5–10) *[not relevant]*

20(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index[5] calculated by reference only to –
    (a) the latest index, and
    (b) the index published for the month which was 12 months before that

[4] I.e. a document that complies with the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 [SI 2013/1505]

[5] Although the "Retail Prices Index" or RPI is no longer recognised as an official national statistic due to its exaggerated effect it continues to be published by the ONS as an unofficial statistic and for the time being is still the index relied upon for various statutory purposes, such as rent capping, and it provides a presumed maximum or minimum in the case of pitch fee adjustments

to which the latest index relates.

(A2) In sub-paragraph (A1), "the latest index"–

(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;

(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).

10. By section 4 of the Act a tribunal has jurisdiction to determine this particular issue and it is therefore the "appropriate judicial body" referred to in the above provisions, and as defined in section 5.

11. Insofar as it is alleged that the respondent is overcharging for water charges, the application for disclosure of information for periods during which the applicant is liable to pay the respondent for such supply complies with the obligation placed upon the site owner by Part 1, Chapter 2, paragraph 22(b) of Schedule 1 to the Act, viz

The owner shall ...

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

(i) any new pitch fee;

(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; ...

12. What may be charged for any water supplied by way of resale by the site owner is governed by the Water Resale Order 2006, made by the Director General of Water Services pursuant to powers conferred on him by section 150 of the Water Industry Act 1991. Paragraph 6 provides different mechanisms for calculating the cost of water supplied to individual users (in this case the occupier of each pitch), depending on whether the supply to that user is metered [6(1)] or unmetered [6(2)]. Further, paragraph 8 allows for an administration charge on top :

8. (1) In addition to the sum calculated in accordance with paragraph 6 of this Order, the charges which the Re-seller may recover from the Purchaser may include a fee in respect of the Re-seller's cost of billing and, if the water supply to the Purchaser's dwelling is metered, the cost of maintaining the meter where these costs are not recovered by other arrangement.

(2) The fee recoverable under sub-paragraph (1) (and by whatever means levied, charged or sought to be recovered) must not exceed 2.5 pence per day for each Purchaser to whose service sub-paragraph 6(1) applies and 1.5 pence per day for each Purchaser to whom sub-paragraph 6(2) applies.

13. Although Ofwat's official guidance[6] refers to administration charges of "around £5 each year for those without a meter and £10 for those with a meter" the actual

[6] *A guide to water resale : Information for household customers* (Ofwat, November 2009)

maximum payable for an unmetered supply is at most £5.49 – in a leap year (or £0.015 x 366).

14. Paragraph 9 is headed "Transparent charging" and sets out the information that the reseller must supply on request by the end customer to show how the charge has been calculated. Failure to provide this information has consequences, as provided for by paragraph 9(3)–(5), in the form of a reduced charge. Paragraph 10 deals with overcharging, and provides that the excess charge paid shall be recoverable together with simple interest at twice the average Bank of England base rate over the period of overcharging.

Discussion and findings

15. Further to the directions order issued on 7th May 2019 the applicant duly filed and served additional submissions, including a copy of the hard-to-find Water Resale Order 2006 (amongst the 2009 Ofwat Guidance), several water bills from Cambridge Water, and an invoice from the respondent to him for the period May 2017–April 2018. He also provided a copy of a letter from the respondent to all the park residents dated 21st March 2019 and a very brief email to him dated 3rd April 2019 in which the respondent said :

> The water invoice is in the post and we do not do statements now, all the information needed is on the form.

16. In response, under cover of a letter from Barr Ellison solicitors dated 6th June 2019, the respondent filed submissions comprising merely an observation that the water charges are calculated by reading the site meter annually and applying the water supplier's rates of charge followed by a series of tables, one for each year. In each table the penultimate row reads "plus service charges", without any explanation of what is meant by that. As the tables concern water and sewerage charges only this must refer to the respondent's administration charges. If so, then subject to the maximum permissible under the 2006 Order any excess is irrecoverable because no attempt has been made to justify it. The excess sums shown in the table at paragraph 1 b. above are therefore recoverable. Interest is payable under paragraph 10 of the Order at twice the average Bank of England base rate over the period of overcharging, but as the total amount repayable is only £115.69 and the base rate has varied between 0.25% and 0.75% per annum any interest would be negligible.

17. The respondent claims to have taken meter readings in March but then produced water bills from Cambridge Water which refer to slightly different periods, using different readings or even estimates. His table for the year 2017–2018 does not even accord with the invoice that he sent to the applicant. As a result the figures that he relies upon are not properly supported, and the sum of £4 780.00 for total cost at item (C) in section 4 of the pitch review form is arithmetically wrong and cannot be relied upon. The respondent should use actual readings and sums actually billed as the basis for claiming shares from the occupiers, if necessary by adjusting the annual pitch review date so that it falls after the supplier's bills have been received.

18. The applicant raises a number of other points concerning the validity of the pitch fee review form. First, section 2 says that the last review date was 1st June 2018. That is wrong. The review date is and has, unless or until changed, been in April

of each year, with the rather irregular notice of increase issued in March by reference to the last published RPI index, namely that for February. The fact that a review may be late – or challenged – does not alter the review date.

19. This seems to be accepted by the respondent, as the current prescribed form is dated 20th March 2019, uses the correct RPI figures, and the uplift has correctly been calculated as 2.5%. However, as the proposed new pitch fee is calculated by adding the current pitch fee at (A) to the RPI percentage uplift at (B), and then adding recoverable costs at (C) and finally making any relevant deductions at (D) (there being none shown) one would need to see the whole workings out, as with the supplementary statements of account produced at the hearing that led to the tribunal's last decision in November 2018. Those showed that the respondent had failed to deduct his administration charges (which were excessive) as well as the water charges before applying the RPI uplift to the net figure. The actual water charge plus permitted administration or billing fee are then added back to produce the new pitch fee.

20. To suggest, as the respondent did in his email to the applicant on 3rd April 2019 (see paragraph 15 above) that the prescribed form contains all the information necessary is quite wrong. The pitch occupier is entitled to see that the calculation has been done properly.

21. The tribunal therefore cannot have any faith in any figure in section 4 of the form other than the 2.5% uplift.

22. The pitch fee review form is thus inadequate and invalid and cannot be relied upon. However, as explained in the tribunal's directions in May 2019, neither party has actually asked for a determination of this year's pitch fee and so – even if it had the essential detail before it – the tribunal is in no position today to do so.

Dated 9th September 2019

Graham Sinclair
First-tier Tribunal Judge

Amended under the slip rule (rule 50) on 18th September 2019