FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HE/PHC/2019/0013 and CHI/00HE/PHI/2019/0200
Property	**:**	49A St Dominic Park Harrowbarrow Callington Cornwall PL17 8BN.
Applicant	**:**	Anthony Turner and Alex Dexter (Any question) (**Turner Dexter**). Wyldecrest Parks (Management) Limited (**Wyldecrest**) (Pitch Fees).
Representative	**:**	Anthony Turner.
Respondent	**:**	**Wyldecrest** (Any question) **Turner Dexter** (Pitch fees).
Representative	**:**	David Sunderland, Estates Director Wyldecrest.
Type of Application	**:**	Any question arising under the Mobile Homes Act 1983 ("the Act"); Section 4 of the Act and Application by Site Owner Pitch Fee Review Paragraph 16 Ch 2 of Part 1 of Schedule 1 to the Act.
Tribunal Members	**:**	Judge C A Rai (Chairman) Michael Woodrow MRICS Chartered Surveyor.
Date and venue of Hearing	**:**	16 March 2020. Plymouth Tribunals Centre St Catherine's House 5 Notte Street Plymouth PL1 2TS.
Date of Decision	**:**	8 April 2020.

DECISION

Background

Pitch Fee

1. On 19 November 2019 Wyldecrest applied to the Tribunal for the determination of a new level of pitch fee for the Property, ("the Pitch Fee Application").

2. The Tribunal issued directions, dated 29 November 2019, (the Directions), that confirmed that the Pitch Fee Application had been made within the statutory time limit and would be determined "on paper" without a hearing. Turner Dexter was directed to respond.

3. Almost immediately after the Directions were issued, Anthony Turner applied to extend the time limits set out therein. David Sunderland, on behalf of the Applicant, objected and Anthony Turner responded.

4. On 9 December 2019 Judge Tildesley OBE issued Amended Directions extending the time limits by approximately two weeks.

Any question

5. In an Application, dated 11 December 2019, Turner Dexter applied to the Tribunal for a determination under section 4 of the Act.

6. Judge D. Agnew issued directions dated 17 December 2019, (Judge Agnew's Directions), providing, amongst other things, that the Application would be determined without a hearing.

7. The Applicant was required to send a detailed signed statement of case to Wyldecrest with a bundle of relevant documents and Wyldecrest was required to respond with a signed statement with copies of witness statements and any additional documents on which it relied.

8. It was directed that the Applicant may concisely reply to the Respondent's statement and that he should prepare the Hearing Bundle, in a file with an index and page numbers, and circulate it to both the Respondent and the Tribunal. The parties were given time limits within which to comply with Judge Agnew's Directions.

9. On 14 January 2020, Wyldecrest applied to vary Judge Agnew's Directions and strike out the Application. It submitted that the Application should be determined, following an oral hearing, if the Tribunal did not strike it out. Furthermore Turner Dexter should be ordered to disclose documentary evidence of all sums invoiced and paid to the park owner for electricity in the five years prior to 21 December 2018.

10. On 17 January 2020 Anthony Turner replied to the Wyldecrest application and also requested that **both** pending applications be determined following an oral hearing.

11. On 21 January 2020 Judge D. Agnew made an order refusing to strike out the Turner Dexter Application and confirming that the applications would be determined following an oral hearing but he stated, "the Tribunal remains of the view that the matter is perfectly capable of being

determined on the papers". He also rejected Wyldecrest's application to order disclosure of electricity invoices. Some time limits in Judge Agnew's Directions were extended.

12. Wyldecrest appealed against Judge D. Agnew's refusal to strike out the Application. Its appeal was rejected on 3 February 2020. Judge D. Agnew said that, in his opinion, the disputed paragraph 12 of the Applicant's agreement was an express term and therefore the Tribunal had jurisdiction to determine the Application.

13. Further Directions made by Judge D. Agnew on 3 February 2020 indicated proposed hearing dates and directed that the Tribunal would not inspect the Park.

14. Prior to the date of the Hearing, both parties sent further correspondence to the Tribunal. The Tribunal declined Turner Dexter's request to delay the proposed hearing and declined Wyldecrest's request to stay the proceedings. It notified Wyldecrest that further submissions regarding jurisdiction could be made to the Tribunal prior to the substantive hearing.

15. The Tribunal received a bundle from the Applicant for the "any question" application, **Bundle 1,** and a bundle from the Applicant Wyldecrest for the pitch fee review, **Bundle 2**. Bundle 1 is not properly paginated and David Sunderland told the Tribunal at the Hearing that the copy received by Wyldecrest was not in a file or binder. Some content in the two bundles is interchangeable between the applications.

The Hearing

16. The Tribunal told the parties it would hear submissions on the "any question" application first.

Applicant's submissions-any question

17. Anthony Turner said that he wanted to demonstrate to the Tribunal that Turner Dexter is not, and has never been, "bad payers" as Wyldecrest had implied. He believed that he had no alternative but to seek recovery of the costs he has incurred to remedy what he described as "the Applicant's electricity issue".

18. The questions he has asked the Tribunal are:- "(a) whether we should be expected to pay the costs of finally remedying an act of perpetuated harassment (b) whether the daily standing charge of 80p is payable at all, where this represented a charge without notice or consultation to the terms of our agreement in all previously applied charges since 2006 (c) whether the respondents are entitled to pass on charges that are derived from the business account of a third party at a higher tariff that would apply to a domestic end user, also where that consumer meter serves other premises and for the park street lighting". [Page 1 of the Applicant's statement of case].

19. In addition he asked, (d) "should the Tribunal determine that a standing daily charge is payable and where the respondents have given notice that they apply late and other payment surcharges, whether such surcharges become payable in the absence of any transparency in those charges and where there is no written or implied agreement that we are under an obligation to pay them and (e) on the grounds that the conduct of the respondents described in this statement has, within the period of the 2019 pitch fee review, unreasonably interfered with our implied right to the quiet enjoyment of our home, we also request that the events described be taken into account in the 2019 pitch fee review".

20. Mr Turner explained the background to the current dispute telling the Tribunal that when the Applicant moved into the Property it was party to the written statement dated 9 October 2006, an incomplete copy of which is in Bundle 2 [Pages 39 – 44], (the Written Statement). At that time the Property had no independent electricity supply. He therefore accepts the Respondent's submission that the Written Statement confers no right to **an independent electricity supply** for the Property on the Applicant. [Tribunal's emphasis].

21. Anthony Turner said he had regularly paid the electricity charges invoiced by the Park owner since he moved on to the Park in 2006, despite claiming he had no access to the calculation of the charges or the readings. He said the invoiced costs had been reasonable and had not included a daily standing charge. Bundle 1 contains an example invoice from Gwealmayowe Park dated 28.03.2008. [page 2 of Section 2].

22. He told the Tribunal that the Park was acquired by the Small family in 2008 and that he was elected Chairman of the Park Residents Association in 2010. He referred to subsequent discontent between himself and the owners which had led to County Court proceedings which he cited as the reason for the previous Park owner installing a coin meter "remote from our home" for his electricity supply.

23. In 2017, by which time the Small family had appointed Real Estate Director Limited, (RED), to manage the Park, he reached agreement with Graham Payne, a director of the company, for the installation of an independent electricity supply, with the installation costs funded by the Park owner. An underground main was installed but the final connection and the installation of the meter was not completed prior to the Park being sold to Wyldecrest in December 2018. Mr Turner's statement records that "we were no longer invoiced for our power, (the costs of which had been c. £9 weekly)" [page 3 of section 2 of Bundle 1.] He suggested that the reason for this concession was an acknowledgement by RED of the risks and unreasonableness associated with the supply.

24. Following the purchase of the Park by Wyldecrest in December 2018, the coin meter was removed and Turner Dexter were invoiced for their electricity by Wyldecrest approximately six months later. Anthony Turner claimed that the tariff, a business tariff, was higher than the previous tariff he had paid and that a daily standing charge had been added to the cost of the electricity consumed. He also stated that he had, by then, arranged for an EDF account in respect of the new independent

supply and that EDF had charged him 19.05 pence per unit and a daily standing charge of 18 pence. [Pages 32 and 33 Bundle 1].

25. Anthony Turner obtained permission from Wyldecrest to connect the Property to the independent electricity supply but this was subject to the Applicant paying all the connection costs himself. Since Anthony Turner claimed that it had been agreed with RED that those costs would have been paid by the Small family, he was unwilling to agree. He acknowledged to the Tribunal that there was no contractual arrangement between Wyldecrest and Turner Dexter but stated that it had inherited the agreement of the former owner that the remaining works necessary to obtain an independent electricity supply should have been funded by the Park owner.

26. When he was unable to reach any agreement with Wyldecrest regarding the installation costs, Turner Dexter paid for the works himself, and now seeks reimbursement of those costs from the Respondent. The invoice from Andrew Davy Electrical for the installation of a new sub main for the new WPD supply is for £689.94 [Page 1 of section 2 of Bundle 1].

27. Anthony Turner also stated that, following its acquisition of the Park, Wyldecrest made a unilateral decision to install an unsuitable type of coin meter. He said the electricity purchased had been on a timer and therefore the meter would only accept a limited number of coins. He believes that such action interfered with his implied right to quiet enjoyment of his home leaving him with no alternative but to arrange for the connection of the independent electricity supply.

28. He suggested that the Respondent was motivated by a wish to seek retribution against him. He submitted extensive evidence about the location of the meter, located externally and some distance from the Property, and that the location was both unsatisfactory and dangerous as the path leading to it was uneven and therefore unsafe.

29. Bundle 1 contained some other copy documents which included details of other payments over several years, a letter from a doctor confirming Anthony Turner's impaired balance, which he referred to as a "hidden disability", and which he submitted made traversing an uneven path to feed a remote coin meter even more hazardous.

30. Anthony Turner admitted breaking the padlock off the meter before Wyldecrest acquired the Park but stated that the monies taken from that meter had been accounted for to the owner and the credit recorded. He had never stolen money or electricity. He stressed on several occasions that the first meter installed by Wyldecrest had been completely unsuitable albeit he accepted that it was later replaced.

31. He said the copy invoices and remittance statements in Bundle 1 were included to rebut the allegation made by Wyldecrest that the Applicant had a bad payment record, which he strenuously denied.

32. When summing up, Anthony Turner stated that his case was very simple. Turner Dexter had been harassed by Wyldecrest. For those reasons he

had no choice but to arrange for the separate electricity supply. When questioned by the Tribunal, he said he had delayed setting up the electricity account needed to enable the supply on account of a family issue.

Respondent's submissions-any question.

33. Mr Sunderland represented the Respondent Wyldecrest. He said that, notwithstanding that he considers that the Tribunal has no jurisdiction to deal with the questions raised by the Applicant, he has responded to the Application. He does not accept the Applicant's submissions are a true reflection of the facts regarding the connection of the independent electricity supply.

34. He confirmed that Wyldecrest took over the management of the Park on 21 December 2018. Soon after, it became aware of the metered electricity supply to the Property. He confirmed that the supply was through a submeter and that the Respondent resells the electricity and is a "Reseller of electricity", as defined in the OFGEM regulations.

35. He stated that "the coin meter which took £1 coins had been broken by the Applicant, who admits to this" but he told the Tribunal that he believes this was done to enable the Applicant to obtain free electricity.

36. He stated that the Respondent cannot legally charge more for electricity than it pays and for that reason it was impossible for Wyldecrest to invoice the Applicant for electricity before it received a supplier bill. After taking over the administration of the Park, Wyldecrest arranged for a new electricity account and it was almost six months before it received an electricity invoice. He said Wyldecrest could not find any information about the previous owners supply account. In his written statement, David Sunderland suggested that in the absence of evidence of any "supplying account", the Applicant must not have been paying for electricity and had in fact been "stealing" electricity for about 5 years.

37. He had concluded this because of the Applicant's refusal to provide copies of bills and payments for the last 5 years and said that the Applicant was not being "entirely honest with the Tribunal" [Paragraphs 8 & 9 page 50 of Section 2 of Bundle 1]. He made no submissions in response to the Applicant's statement that it had received a waiver of payment for electricity from RED prior to the sale of the Park. His application for disclosure of evidence of payment of electricity charges had been rejected with his application to strike out.

38. Whilst he accepted that the previous owner had arranged and paid for the installation of the direct supply, Wyldecrest concluded that the Applicant had delayed the actual connection of the new electricity supply because he was in receipt of free electricity and "had been for several years".

39. The first electricity bill, addressed to Shelfside (holdings) Limited (sic), for the period 22 December 2018 to 4 June 2019 was received by Wyldecrest on 5 July 2019, [Page 1 onwards of Part 3 of Bundle 1]. Following receipt, Wyldecrest calculated the rate for the supply in

accordance with the OFGEM rules. (Its calculation is in the same part of Bundle 1 on the page which precedes the invoice). He explained that Wyldecrest divided the total electricity charges, (electricity consumed plus standing charge), by the number of units to calculate the unit cost which calculation is shown as 0.67 pence for the period between 22.12.18 and 04.06.19.

40. The Applicant refused to pay the first bill issued by Wyldecrest so Wyldecrest installed the coin meter, which David Sunderland said is its practice where it considers there is a risk of non-payment of bills. He believed this action motivated the Applicant to connect the direct electricity supply to the Property. He also confirmed that the broken coin meter, to which Anthony Turner had referred, had been replaced with a check meter.

41. He told the Tribunal that the Respondent does not accept that there was any agreement, between the previous owner and the Applicant to fund the costs of an independent electricity supply, which would bind the Respondent. The failure of Wyldecrest to adhere to a prior contractual agreement, had its existence been proven, is a contractual dispute unconnected with the Applicant's occupation agreement and therefore the Applicant's remedy would be in the County Court. He referred the Tribunal to the Court of Appeal decision, **Crittenden (Warren Park) Limited v. Elliott 75 P&CR** , (the Crittenden case.) There had never been a direct electricity supply to the Property therefore the occupation agreement cannot be relied upon as the basis of the "question" because the owners obligations in the Written Statement could not have related to a direct supply .

42. The obligation in paragraph 22(c) of Part 2 of the Schedule to the Act is an obligation **to maintain the supply.** [Tribunal emphasis]. Furthermore he said that the evidence of the amount claimed by the Applicant was insufficient as he had only provided a copy of an invoice from an electrician which made no reference to a specification indicating what work was actually done. In his view, the supply in the home could not have been modern and would have needed upgrading and it was therefore likely that the invoiced costs included the cost of those works. However he stressed that his submissions are only relevant if the Tribunal rejects his submission that it has no jurisdiction to determine the Application.

43. He also referred the Tribunal to the Wickens Meadow decision, a copy of which is also in Bundle 1. **Julie Truzzi-Franconi and others v Wyldecrest Parks Management Ltd CHI/29UK/PHC/2018** (FTT determination by Judge M. Loveday of 9 applications). Although that decision related to a gas supply, the principle is the same and it supports his submissions. Finally he referred to the Upper Tribunal Beechwood Park decision, **Wyldecrest Parks (Management Limited v. Gordon Santer [2018] UKUT 0030 (LC)**.

44. Notwithstanding the "evidence" put forward by the Applicant that he "pays his bills", a sum remains outstanding on his electricity account at the date of the Hearing. He therefore requested that the Tribunal, as part of its determination, order payment of this sum. He did not quantify the amount.

45. The conclusion in the Crittenden case, on which Wyldecrest relies, is that the written agreement must be construed in its factual context having regard to the surrounding circumstance that existed at the time it was made. Anthony Turner accepted that as the Property had no independent electricity supply at that time, the owner's obligations in the Written Statement to maintain a supply cannot be interpreted as relating to anything other than the "spurred supply from the Clubhouse", which is what was available at that time. Therefore the Tribunal cannot have jurisdiction to determine any question relating to the provision of an independent electricity supply or any alleged agreement relating to the costs of its installation. "A written pitch fee agreement is exhaustive of the terms between the parties and excludes collateral oral contracts."

46. The Wickens Meadow case concluded that the express terms of a written agreement are overruled by the terms implied by the Act if there is a conflict. Mr Sunderland did not expand his submissions at the Hearing merely referring to the case. However he had relied upon it in his submissions to the Tribunal in his unsuccessful appeal against Judge D. Agnew's Order dated 21 January 2020 on Application to Strike Out and Other Directions.

47. David Sunderland also referred the Tribunal to the very recent decision in **Wyldecrest v. Anthony Turner 2020 UKUT 0040 (LC**) in which Judge Elizabeth Cooke of the Upper Tribunal said "I agree with the FTT's view that section 4 of the 1983 Act does not give it carte blanche in respect of every aspect of the relationship between the site owner and the occupier of the mobile home ….Section 4 does not confer any rights; it provides only the forum for the resolution of disputes. And not just any disputes; only those arising under the 1983 Act or the occupier's agreement". [Paragraph 32].

48. David Sunderland thereafter submitted that, should the Tribunal not accept that it is without jurisdiction to determine the application, the frequency and manner of invoicing are not prescribed by the OFGEM regulations and it is discretionary for the Park owner to recover costs "as and when", albeit it cannot charge more for electricity than it pays its supplier.

49. The Applicant had been provided with copies of the electricity invoices received by Wyldecrest accompanied by a calculation sheet showing the cost of each unit of electricity consumed. Wyldecrest does not receive advance notice of supplier charging rates so it would be impossible to provide advance notice of the rates to the Respondent. Furthermore, the standing charge is effectively apportioned by adding it to the charge for of the number of units consumed. The electricity account is a business account because Wyldecrest is a business and not entitled to a domestic electricity supply.

Pitch Fee

50. Although the Tribunal had intended to hear oral submissions, and started to do so, the parties conduct had by then deteriorated so much that the Judge terminated the Hearing advising them that there was no merit in hearing further oral submissions because of their unacceptable behaviour. The Tribunal would instead rely upon the written statements in Bundle 2. Furthermore the Tribunal had always considered, and the parties had originally agreed, that the application should be dealt with "on paper". It was only after Wyldecrest requested a hearing of the "any question" application that the Tribunal had agreed to both applications being heard together. [See paragraph 11 above].

Respondent's submissions-pitch fee

51. Responding to a preliminary comment which had been put forward in written submissions as a ground to strike out the proceedings by David Sunderland, Anthony Turner admitted that he had not signed the Respondent's statement of case stating that it had been an oversight. David Sunderland immediately disagreed with his explanation, submitting the omission was in breach of the Tribunal's directions and therefore his case should be struck out.

52. Anthony Turner said that he had set out his understanding of the relevant law and process in his submissions and understood and accepted that owner is entitled to an annual review of the pitch fee. He accepts that the presumption set out in paragraph 20 of Chapter 2 of Part 1 of the Schedule to the Act is that the pitch fee shall increase or decrease by a percentage in line with the adjustment to the Retail Price Index (RPI), **unless,** (Tribunal's emphasis), it is unreasonable having regard to paragraph 18(1).

53. Anthony Turner said that the Applicants action had interfered with the Respondent's implied right to quiet enjoyment of his home. He also said that account could be taken of the quality of the services on the Park and any direct effect on the owners maintenance and management costs.

54. He told the Tribunal that the Property faces the back of garages which "have been in dilapidation for some years". In 2006 these had been fronted by well maintained conifer hedging which had not subsequently been maintained and were eventually removed prior to December 2018.

55. The area is now unsightly and not maintained and he considers that all the areas surrounding the Property are poorly maintained or not maintained and now covered by "uncontrolled weeds". The area behind the Property "is an area of similar ongoing dereliction". He said in his written statement, "that there is no justification for an increase where we are surrounded by such dilapidations".

56. He complained about the condition of the concrete path previously damaged by the installation of the submain to provide the independent power supply to the Property and not made good. He said that the Respondent had had to cut the hedging dividing the garden of the Property from the adjoining paddock. Although it maintained its garden shrubs, these had been sprayed with weed killer.

57. He said that the Property is the closest to the sewerage plant on the Park and therefore disproportionately exposed to deficiencies and foul smells. He referred to the decision of the Tribunal on the 2018 pitch fee review and said that one of the Tribunal's reasons that the condition of the plant could not evidence "lack of amenity" had been the absence of any condition report, but told the Tribunal it was unrealistic to expect the residents to have obtained such a report. He had included copies of several emails between himself and the environment agency in Bundle 2, [Pages 81 – 85], and photographs showing the back of garages, the boundary adjacent to the Property covered with weeds and the uneven path. [Pages 86 – 90].

58. He submitted that it was reasonable to assume that the areas surrounding the Property are not maintained because of his challenges to the Applicant's trading practices. He alleged this was deliberate discrimination against the Respondent by the Applicant.

59. Anthony Turner also alleged that the failure by the Applicant to fulfil, what he considered to be, a binding agreement made by the previous park owner to pay for the connection of the Respondent's electricity supply was a breach of the implied covenant of quiet enjoyment in the Act. This was another ground for his opposition to the pitch fee increase.

Applicant's submissions

60. David Sunderland claimed that the condition of the Park had not changed since the date of the Tribunal's last visit on 17 April 2019 which preceded its decision regarding the 2018 pitch fee increase.

61. He was critical of the Respondent's failure to comply with directions, by not signing his statement of case and said that his case should be struck out because of that omission.

62. He says that the Applicant's obligations in paragraph 17 of Chapter 2 of Part 1 of the Schedule 1 of the Act have been fully complied with and the Tribunal should make an order determining that the amount of the new Pitch Fee is as proposed.

63. The proposed increase has been calculated in accordance with the Act. Only weighty matters are likely to displace the presumption. He quoted the cases of **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC**), and **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** as authority but did not provide copies of either although both are referred to in the **2019 FTT decision Wyldecrest Parks Management Limited v. Anthony Turner, Alex Dexter and others**, a copy of which is reproduced in Bundle 2, [Page 56 onwards]. He does not accept that evidence of any deterioration in the condition or amenity of the Park has been provided.

64. He refused acknowledge the reference made by the Respondent to his submissions in the "any question" determination as having any relevance to this application.

65. He said that the Park is regularly maintained. The Respondent's case is "purely vexatious and ill conceived". He has offered to pay half the increase so he accepted that the notice and procedure followed are correct. It is normal for his accounts department to question why any demanded payment is not made and there is no sinister intent. He also questioned the inclusion of the letter to the Applicant at pages 80 - 81 of Bundle 2, (in which the offer to pay half the proposed increase is contained), which he said was not mentioned in the Respondent's statement and which he claimed the Applicant had not received.

66. He also said that the Respondent will never agree to a proposed increase in the pitch fee and he will be forced to apply to the Tribunal every year, the cost of which is disproportionate to the amount of the increase, and for those reasons the Respondent's conduct is unreasonable.

67. Therefore, he said, it is appropriate that the Tribunal should order the refund of the application fee and favourably consider a costs application under Rule 13(1)(a), although he reserved the Applicant's position in respect of such an application until after the decision is issued.

The Law

68. The Tribunal's jurisdiction to determine the "any question" application is in section 4 of the Act. Reference has also been made to section 231 of the Housing Act 2004. The relevant legislation pertinent to the pitch fee application is in Schedule 1 of the Act. All references to "paragraphs" in the Tribunals reasons are to paragraphs within Chapter 2 of Part 1 of that Schedule. Extracts of the relevant legislation are contained in the Schedule to this Decision.

Reasons for its decisions – Any Question

69. It is agreed that when Turner Dexter moved into the Property, the electricity supply to their home was a spurred supply from the Clubhouse. The Clubhouse is no longer used and has apparently been derelict for some years. Neither party suggested that there is any significant consumption of electricity within that building so the Tribunal accepts it is likely that the entire supply of electricity is to the Property. Although Anthony Turner alleged that the supply might also provide electricity for street lights, the only evidence of this was the reference to a handwritten annotation on the invoice in Page 23 Part 2 of Bundle 1 "**CLUBHOUSE/STREET LIGHTS**". David Sunderland accepted that the annotation had been made by Wyldecrest's accounts department but said it was administrative. Anthony Turner apparently accepted this explanation and made no further submissions.

70. Bundle 1 contained several duplicates of electricity invoices for the period from the 22 December 2018 until the Wyldecrest supply was disconnected, amongst which was an estimated invoice and a calculation from Wyldecrest subsequently substituted. David Sunderland confirmed the calculation of the rate per unit, initially 67 pence but later 31 pence, and that the correct invoices were those which accompanied a letter dated 22 January 2020 and dated 15.08.19 and 01.11.19. [Section 3 of Bundle 1]. The outstanding balance of the electricity account referred to by David Sunderland is £142.14. From the evidence provided the

Tribunal accepts that only the metered costs of the electricity and an element of the standing charge apportioned in relation to the units consumed has been invoiced to the Applicant.

71. Whilst Anthony Turner had suggested he had previously paid an average of £9 a week for electricity, the amount invoiced by Wyldecrest during its period of reselling equates to approximately of £14 a week.

72. The Tribunal finds that regardless of the agreement between Turner Dexter and RED, the delay in the connection of the independent supply to the Property was caused by Antony Turner which is evidenced by the emails he disclosed.

73. An email dated 11 May 2018 from Graham Payne to Anthony Turner confirmed imminent commencement of the works; the email dated 14 June 2018 from Anthony Turner confirmed completion of the trenching. By an email dated 6 July 2018, Graham Payne chased up the installation of a meter, which was Anthony Turner's responsibility, and he chased again by emails dated 13 August 2018 and 11 September 2018. [Pages 15 – 21 of Part 1 of Bundle 1].

74. The invoice from Andrew Davy Electrical evidencing the expenditure incurred by Turner Dexter does not explain what works were undertaken referring only to the installation of a new sub main for the new WPD supply.

75. The Applicant has asked five questions, four of which the Tribunal has considered it appropriate to determine under this application. [See paragraphs 18 and 19 above].

76. **Firstly** it has found no evidence of "perpetuated harassment" on the part of the Respondent. On his own admission, Turner Dexter was not paying for his electricity when Wyldecrest took over the Park. No invoice was issued by Wyldecrest for almost six months. The invoice issued reflected the actual charges incurred by Wyldecrest which it was entitled to recover.

77. In fact the unit charge was less than Turner Dexter had previously paid. The Respondent provided copies of various random invoices and remittance advices within the bundle. Only one relates to electricity and four copies of the same invoice are included at pages 65, 83, 87 and 95 of section 2 which shows a charge of £1 a unit and a charge of £85 for approximately a three month period, being the £9 a week to which Anthony Turner referred. However it is in respect of electricity consumption in 2017.

78. Whilst the Tribunal has concluded that there may have been some "posturing" by Wyldecrest by it installing an unsuitable meter, which was not denied, that had apparently been swiftly replaced with a check meter. The Applicant was subsequently invoiced for electricity from the period commencing on the day Wyldecrest took over the administration of the Park.

79. **Secondly** the daily standing charge of 80p, when added to the cost of the units of electricity consumed, equated to an average charge of 67 pence a unit for the period of the first invoice and later 31 pence per unit during the period of the latter invoices. The Tribunal accepted Wyldecrest's submissions that it was impossible for it to notify the Applicant of the unit charge before it received an invoice from its supplier. Neither has the Applicant provided any evidence that the Respondent could have known the amount of the unit charge the Applicant had previously paid. Furthermore Anthony Turner admitted that the previous owner had at some point waived all payments preceding the transfer of the Park on 21 December 2018. No evidence was provided to evidence when this waiver had commenced.

80. **Thirdly** the Tribunal accepts that the Respondent as a business would incur a business tariff.

81. **Fourthly** no evidence was provided that the Applicant has been charged a late payment surcharge. The Applicants question seemed to relate to a notice, which was not disclosed. Neither party made any submissions about it.

82. The fifth question relates more appropriately to the Pitch Fee application so has not been considered in this part of its decision.

83. Generally the Tribunal found that that David Sunderland and Anthony Turner do not relate well to each other as evidenced by their mutually antagonistic conduct throughout the Hearing which was punctuated by interruptions and "sotto voce" comments from both parties whilst the other addressed the Tribunal. It concluded that their poor relationship makes it impossible for them to resolve any differences without resorting to the intervention of another party.

Jurisdiction

84. David Sunderland submitted that in any case, and regardless of his having dealt with the questions raised by the Respondent, Section 4 of the Act did not give the Tribunal jurisdiction to determine the application because the Applicant was not entitled to an independent electricity supply at the date of the Written Statement. This was a different argument from the argument put forward in his previous application to the Tribunal to strike out the Application. He had included the case law on which he relied in that application in Bundle 1, which confused the Applicant as it was not referred to in the Respondent's statement or in subsequent emails sent to the Tribunal between the date of the refusal to strike out and the Hearing. The Respondent's arguments at the Hearing were novel and the Applicant had received no prior notice of them. This is in clear breach of the Tribunal's directions.

85. He stated that, in reliance of the decision in the Court of Appeal Case of Crittenden, which he said will bind this Tribunal, the Written Statement must be construed as including only an obligation for the owner to maintain the supply which existed at the time it was entered into which was the "spurred supply" through the Clubhouse. Therefore the Tribunal could not consider a question relating to the Respondent's obligation to

maintain the current supply. This Tribunal does not agree with Wyldecrest. Whilst it accepts, as the Applicant did, that the Respondent has no obligation under the Written Statement to maintain the current supply, that does not deprive it of jurisdiction to consider the questions raised by the Applicant which fall within clause 4 of the Act.

86. The Tribunal is the "forum" for consideration of the owners obligations in relation to the supply of electricity which, until very recently, was supplied to the Property by the Respondent. The questions raised clearly arise under the agreement. They relate to the supply of electricity and the payment for it and an alleged contractual arrangement for the installation of a different supply and alleged harassment surrounding the supply.

87. Furthermore, section 231A of the Housing Act 2004 gives the tribunal general power, in addition to its jurisdiction under the Act , to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of proceedings on any issue in or in connection with them. Subsection 4 sets out the directions which may be given requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.

88. It is just, expeditious and economical for this Tribunal to determine both sets of proceedings and desirable that it deal with any issues on or in connection with them.

89. In the course of the Hearing, David Sunderland asked the Tribunal to make an order requiring that the Applicant pay the outstanding charges for electricity. He clearly accepted that the Tribunal has jurisdiction to deal with that application as presumably he otherwise would not have made it. He cannot pick and choose whether the Tribunal has jurisdiction to suit Wyldecrest. In the absence of proper submissions regarding this application and any calculation of the sum due, the Tribunal declines to make such an order. [The calculation referred to in paragraph 70 above is the Tribunal's and neither party referred to an amount].

90. David Sunderland also stated that the existence of an agreement with the previous Park owner, had it existed was a contractual issue and therefore one which should have been referred to the County Court. Whilst unnecessary to determine this, as its decision has been made for different reasons, this Tribunal does not agree. The purpose of section 231A of the Housing Act is to confer additional general powers on the FTT and the Upper Tribunal when exercising its jurisdiction under the Act which, of course, have been further underlined by its overriding objective in Rule 3 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. [SI 1169].

Reasons for its decision - Pitch Fee

91. The pitch fee review has been correctly undertaken by the Applicant and there is no dispute that the increase is in accordance with the statutory presumption and that is accepted by the Respondent.

92. Therefore for the increase to be displaced, the Respondent must show it is unreasonable having regard to paragraph 18.

93. His grounds were twofold in that he firstly sought to demonstrate deterioration in the condition or amenity and secondly, he somewhat obliquely referred to a lack of maintenance.

94. Nothing submitted has persuaded the Tribunal that it should displace the presumption of a pitch fee increase in line with the increase in the RPI since the last review.

95. No deterioration in the condition or the amenity of the Park has been proven. The Tribunal agrees that those photographs provided by the Respondent in Bundle 2 cannot be relied upon as evidence for the reasons identified by the Applicant. Even if these had been admissible, they do not support the Respondent's submissions that there has been a decrease in amenity or condition, as on his own evidence, the condition of the Park has not changed since 2013.

96. The emails between the Respondent and the Environment Agency confirm that the sewerage plant was repaired and is not causing pollution.

97. The **fifth** question raised by the Respondent regarding a breach of its implied covenant to quiet enjoyment, even if proven cannot be a material factor in the determination of the pitch fee review as it is not mentioned in paragraph 18 nor was it within the parameters of the "weighty matters" which might displace the presumption of increase referred to paragraph 17, referred to in the **Tony Vyse Case**

98. If, and it was not clear, the Respondent sought to rely on paragraph 18(1)(ba), this is misconceived as this refers to a direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date.

99. For all of those reasons, the Tribunal confirms the pitch fee increase proposed by the Applicant effective from 1 September 2019.

100. Since it has decided all of the Respondent's submissions were without merit, it also orders that the Respondent to that application, Turner Dexter, refund the application fee of £20 to the Applicant, Wyldecrest. [Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013]. [SI 1169].

Generally

101. The poor conduct of the parties during the Hearing was also reflected in their written submissions and in their correspondence with the Tribunal before the Hearing.

102. Anthony Turner's claims of harassment and allegations of being targeted by Wyldecrest were oft repeated. David Sunderland referred to Anthony Turner several times as the "serial litigant". He questioned the majority

of his submissions to the Tribunal, seeking strike out of the response to the application because of his unsigned statement of case. He had also repeatedly emailed the Tribunal on the working days immediately preceding the Hearing seeking strike out on other grounds which it has not been necessary to consider as the Tribunal had already rejected his applications. He deliberately refused to connect Anthony Turner's arguments in the two cases, suggesting that because of the incomplete case reference quoted "it is not clear to the Applicant what is being referred to and in what context so they are unable to respond". [Page 50 of Bundle 2].

103. Neither party demonstrated any willingness to comply properly with the Tribunal's directions or further its overriding objective in Rule 3. Whilst the Tribunal had used all possible endeavours to avoid its decision being influenced by such conduct, it is appropriate to record that it has found this challenging.

Judge C A Rai

(Chairman)

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.

Schedule

Mobile Homes Act 1983 as amended

Section 4 Jurisdiction of the court

The court shall have jurisdiction to determine any question arising under this Act or any agreement to which it applies, and to entertain any proceedings brought under this Act or any such agreement.
(1) In relation to a protected site . . ., a tribunal has jurisdiction—
(a) to determine any question arising under this Act or any agreement to which it applies; and
(b) to entertain any proceedings brought under this Act or any such agreement,
subject to subsections (2) to (6).

Schedule 1 Part I Terms implied by Act Chapter 2 paragraphs
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.
18
(1) When determining the amount of the new pitch fee particular regard shall be had to—
(a) any sums expended by the owner since the last review date on improvements—
(i) which are for the benefit of the occupiers of mobile homes on the protected site;
(ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and
(iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;
(aa) . . . any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);
(ab) . . . any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph);
(b) . . .
(ba) . . . any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and
(c) . . ..

(1A) But. . . no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.
(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.
(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

20

(A1) 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 calculated by reference only to—
(a) the latest index, and
(b) the index published for the month which was 12 months before that 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).

22

Owner's obligations

The owner shall—.....

(c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home.

27

In this Chapter--
.....;
"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, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;

Extracted from the Housing Act 2004

Clause 231A. Additional Powers of First-tier Tribunal and Upper Tribunal
(1)The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).

(2)The tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.

.....

(4)When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate)—

(a)directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;