FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/42UD/PHC/2020/0004**
Property	:	**1 Bourne Park, Ipswich, Suffolk IP2 8LU**
Applicant	:	Catherine Kersey
Respondent	:	Roger Skinner & Stephen Salter t/a The Skinner Salter Partnership
Type of Application	:	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 decision	:	14th October 2020

DECISION following a paper determination

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Questions and determination

1. The respondent site owner seeks :
   a. to amend the method of charging for water consumed by occupiers of the licensed park home site, by introducing individual water meters (the cost of installing meters being met by itself); and
   b. To alter the Park Rules by limiting parking to one vehicle per pitch, with the parking of any additional vehicles (subject to availability) being by separate agreement and at additional cost. The required consultation

began in March 2020.

2. The applicant occupier, with her husband, of a pitch on the site asks the tribunal to determine the following questions. The majority are set out in her application, with two additional numbered points included in her Statement of Case found at the front of her hearing bundle :

   1) Please determine whether the way the respondent wants to change the way water is charged will mean higher costs for water. They claim this will be fairer, is this true?
   2) The petition which was signed by the residents should have settled the matter. The owner made a new proposal but the issue seemed exactly the same except some residents would have meters and others would not. The tribunal needs to be aware, some people want a meter, but not if that is going to mean higher bills and padded bills.
   3) The respondent is forbidding the use of hosepipes unless they implement their change to water charges. Why is this if we are already paying for water and only if we accept water meters? Does this conform with our agreement?
   4) Please see the first water bill from the owner with their letter. They have added 50m³ of water without proof of the reading or the rate. They have also asked for payment even though at least two households continued to pay the site fee and the amount approved by the FTT 2018 decision which was £17.53 per month, so £52.59 over the 3 months. This was not deducted from our invoice.
   5) The respondent is once again trying to charge for 2nd cars' parking even though parking is not a problem and they were told in a decision in June 2018 they could not do this. Please restate what the position is.
   6) The respondent has forbidden the owner at No. 21 from parking his car next to his home. As this ban does not apply to other residents we believe our neighbour is being victimised. Please could the Tribunal instruct the respondent to allow this as his parking would not be in breach of the respondent's council licence.
   7) The respondent has issued a new rent review and added electricity - is this a recoverable cost?
   8) The attendant list of items at the end of the proposal having nothing to do with water and car parking charges cause the site some anxiety. We were told this was a legal requirement - can the tribunal please confirm if this is true and why?

3. The tribunal determines these questions as follows :

   1) The tribunal cannot say whether the cost of water for the applicant and/or other occupiers will be higher or lower than at present, save that the Anglian Water/WAVE Orange "wholesale" and "retail" rates are cheaper than the [domestic] "customer" rate. Further, charging for actual usage is likely to save money for single occupiers, and those who do not use a hosepipe to water their gardens or wash their cars.
   2) This is not a question arising under the agreement which the tribunal can answer.
   3) Rule 7 of the Park Site Rules states that :

      > Where water is not separately metered or rated the use of hoses is forbidden without prior approval of the Owner, except in case of fire.

The site owner's present stance is therefore in conformity with the site rules, which form part of the written statement, and is lawful.

4) The respondent has, by email dated 10th August 2020, acknowledged a typographical error in the covering letter with its demand dated 31st July 2020. The result is that the calculation of 612m³ is and was correct. This illustrates the importance of checking the meter readings carefully, ideally in the presence of the occupier.

5) The proposed parking amendment to the Site Rules is dependent upon the change being **necessary** :
   (a) to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers; or
   (b) to promote and maintain community cohesion on the site.

   The respondent has failed to satisfy the tribunal of either, so the charge for a second vehicle is unenforceable.

6) By site rule 10 :

   > Vehicles must keep to the authorised parking spaces and to the roads, which must not be obstructed.

   Unless parking next to a mobile home (and subject to compliance with site licence conditions 5.8 and 14.2) has been authorised by the site owner then parking there is not permitted.

7) The contribution of £2.51 per month towards the cost of electricity for "pumps/office" is not recoverable under paragraph 3(b) of Part IV of the agreement [express terms], and thus cannot be added as item (C) in section 4 of the pitch review form dated 28th April 2020.

8) As previously explained by the respondent, the notes set out on pages 2–4 of the prescribed form of Site Rules Proposal Notice must be included, and those of particular concern to the applicant are clearly marked :

   > **Prescribed matters to which site rules are of no effect** so far as they make provision in relation to (Regulation 5 (Schedule 5) – matters prescribed for the purposes of section 2C(8) of the 1983 Act

   Had the applicant read the notice carefully and/or taken the advice of the Leasehold Advisory Service (not the tribunal) and sought advice from a solicitor then such concerns would have been allayed.

Background

4. The subject licensed residential park home site is situate between the eastern end of Bourne Park, Ipswich and the main London to Norwich railway line, near Bourne Bridge. It has been the subject of past litigation leading to a consent order in the Ipswich County Court on 17th May 1990 and a determination by this tribunal dated 24th September 2018 concerning the proposed pitch fee increase as from 1st May of that year.

5. From the tone of the correspondence put before the tribunal on this occasion the relationship between site owner and occupiers (and certainly the applicant) is governed by profound mistrust. Some of this is caused by misunderstanding, and a failure to read documents carefully.

6. The site owner is entitled to add to the annual pitch fee a sum to cover the cost of water consumed by the occupiers. To date this has been done by dividing the cost equally between all the pitches, regardless of size of the number of occupiers. The site owner now wishes to move to a system of individual water meters, these

to be installed free of charge and read quarterly by its staff. By doing so it will be able to permit individual occupiers to make free use of hosepipes (subject to any restrictions imposed by the utility supplier in times of drought or other reasons for water shortage), safe in the knowledge that this will not adversely affect the cost imposed on those not choosing to use hosepipes, or making more modest use of them.

7. The initial proposal was that all occupiers should switch to meters, but upon this meeting some resistance a second proposal was advanced whereby occupiers could choose. Those with meters would pay for their actual consumption; those without would pay an equal share of the balance of the supplier's overall charge to the site. Some have had meters installed, and some demands were issued on this basis. Due to this application those have been withdrawn and fresh demands based on equal shares were issued.

8. A pitch review form dated 28th April 2020 also included a small additional charge for electricity for "pumps/office". This is challenged on the basis that the tribunal ruled against such additions in its previous decision.

9. Separately, the respondent site owner has sought to amend the site rules so that it may charge occupiers for the parking of any second or additional vehicle. The applicant, supported by another occupier who was party to the previous tribunal proceedings, disputes the need for such a rule and says there is plenty of unused parking space already. As the applicant has raised the issue as part of this application the tribunal presumes that the respondent has not yet deposited the proposed new rule with the local authority, Ipswich Borough Council.

Material statutory and regulatory provisions

10. This is a park home site (a "protected site") licensed by the local authority and governed by the provisions of the Mobile Homes Act 1983, as amended. By section 2(1) :

> In any agreement to which this Act applies there shall be implied the applicable terms set out in Part I of Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.

11. By section 4, this 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 certain exceptions which are not material to this dispute.

12. Section 2C of the Mobile Homes Act 1983 (as amended by the Mobile Homes Act 2013) provides :

> (1) In the case of a protected site, other than a gypsy and traveller site, for which there are site rules, each of the rules is to be an express term of each agreement to which this Act applies that relates to a pitch on the site (including an agreement made before commencement or one made before the making of the rules).
>
> (2) The "site rules" for a protected site are rules made by the owner in accordance with such procedure as may be prescribed which relate to –
>
> (a) the management and conduct of the site, or
>
> (b) such other matters as may be prescribed.

(3) Any rules made by the owner before commencement which relate to a matter mentioned in subsection (2) cease to have effect at the end of such period beginning with commencement as may be prescribed.

(4) Site rules come into force at the end of such period beginning with the first consultation day as may be prescribed, if a copy of the rules is deposited with the local authority before the end of that period.

(5) Where a site rule is varied, the rule as varied comes into force at the end of such period beginning with the first consultation day as may be prescribed, if –

  (a) the rule is varied in accordance with such procedure as may be prescribed, and

  (b) a copy of the rule as varied is deposited with the local authority before the end of that period.

(6) Where a site rule is deleted, the deletion comes into force at the end of such period beginning with the first consultation day as may be prescribed, if –

  (a) the rule is deleted in accordance with such procedure as may be prescribed, and

  (b) notice of the deletion is deposited with the local authority before the end of that period.

(7) Regulations may provide that a site rule may not be made, varied or deleted unless a proposal to make, vary or delete the rule is notified to the occupiers of the site in question in accordance with the regulations.

(8) Regulations may provide that site rules, or rules such as are mentioned in subsection (3), are of no effect in so far as they make provision in relation to prescribed matters.

(9) Regulations may make provision as to the resolution of disputes –

  (a) relating to a proposal to make, vary or delete a site rule;

  (b) as to whether the making, variation or deletion of a site rule was in accordance with the applicable prescribed procedure;

  (c) as to whether a deposit required to be made by virtue of subsection (4), (5) or (6) was made before the end of the relevant period.

(10) Provision under subsection (9) may confer functions on a tribunal.

(11) Regulations may –

  (a) require a local authority to establish and keep up to date a register of site rules in respect of protected sites in its area;

  (b) require a local authority to publish the up-to-date register;

  (c) provide that any deposit required to be made by virtue of subsection (4), (5) or (6) must be accompanied by a fee of such amount as the local authority may determine.

13. Section 2D makes supplementary provisions, including definitions for the terms “commencement”, “first consultation day”, and “prescribed” and an explanation of how and by whom regulations may be made.

14. The Mobile Homes (Site Rules) (England) Regulations 2014 apply. Rules 4 and 5 provide :

4 Matters prescribed for the purposes of section 2C(2)(b) of the 1983 Act

(1) The matters prescribed for the purposes of section 2C(2)(b) are the matters set out in paragraph (2).

(2) A site rule must be necessary-

  (a) to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers; or

  (b) to promote and maintain community cohesion on the site.

5 Matters prescribed for the purposes of section 2C(8) of the 1983 Act
A site rule is of no effect in so far as it makes provision in relation to any of the matters prescribed in Schedule 5 to these Regulations.

15. Regulations 7–9 prescribe the procedure for making, varying or deleting site rules, including the requirement to consult every occupier and any qualifying residents' association using the prescribed proposal notice found in Schedule 1 or a form substantially to the same effect . The local authority does not need to be consulted. If not satisfied with the site owner's decision following responses to the consultation then a consultee may appeal to the tribunal [Reg 10].

16. By regulation 12(1), where an owner has decided to implement new site rules or the variation or deletion of site rules then, unless there is any pending appeal, the owner must deposit the site rules or deletion notice with the local authority no sooner than 28 days after service of the consultation response document but no later than 42 days after service of the consultation response document. The site owner must then notify every occupier (and qualifying residents' association) in writing of such deposit within 7 days of doing so. The site rules then come into effect at the end of the period of 21 days beginning with the date of service of the notification of the deposit.

17. Regulation 15 provides that any pre-commencement site rules shall cease to have effect 12 months after the coming into force of the regulations (i.e. 4th February 2015) or on the date that the new site rules come into force, if earlier. This may be extended if an appeal is not finally determined before then.

The evidence

18. As directed, each party produced their own bundle of documents for the tribunal. The applicant did so on paper, the respondent digitally as a pdf file. With two bundles there is a tendency, as here, for some duplication; yet neither contained a copy of the full written agreement. (The applicant thought that she had, but it was in fact only those parts relating to her and her husband taking an assignment of the previous occupier's interest in the home and the agreement). The respondent produced only the first page of Part IV (Express terms), including the important paragraph 3(b). Both produced copies of the site licence, the proposal notice, and a previous tribunal decision. The respondent provided the site rules.

19. The applicant's bundle contained a large amount of correspondence with other occupiers on the site, as well as with the respondent's Ms Kirsty Marshall (who, as an employee, was incorrectly named as respondent in the application). This correspondence tended to generate more heat than light, but the respondent did acknowledge that a complaint about overcharging for water was caused by a typographical error in the covering letter accompanying a metered water bill.

20. On one matter, though, the applicant sowed confusion by referring in her index, concerning pages 90–97, to a "FTT preliminary response". On looking at those pages, although her husband wrote to other occupiers about being in contact with the tribunal [97], the truth was in fact that his wife had been in touch by email with the independent (but government-supported) Leasehold Advisory Service. The two should not be confused.

21. Importantly, so far as the parking issue is concerned, while the applicant's bundle contained some evidence – and a witness statement by Frank Brunning, of 21 Bourne Park (found buried at [117]), the respondent's statement of case only contained mere assertion that as there are 26 spaces and 26 homes a new site rule for additional cars was required.

22. It is worth noting that condition 5.8 in the local authority's site licence provides that :

> Private cars may be parked within the separation distance providing that they do not obstruct entrances to caravans or access around them and they are a minimum of 3 metres from adjacent caravans

and 14.1 and 14.2 that :

> 14.1 Suitably surfaced parking spaces shall be provided to meet the requirements of residents and their visitors. The parking spaces shall be maintained and kept in repair.
>
> 14.2 Only one car may be parked between adjoining caravans provided that the door to neither caravan is obstructed and they are a minimum of 3 metres from an adjacent caravan.

23. Among the existing site rules is rule 10. It provides that :

> Vehicles must keep to the authorised parking spaces and to the roads, which must not be obstructed.

It is unclear from the evidence if parking next to homes (and, if so, whether that is in compliance with licence conditions 5.8 and 14.2) has been authorised by the site owner or merely tolerated – save in the case of Mr Brunning, who has been refused the right to park next to his home.

Discussion and findings

24. The principal issues here are :
    a. How water charges may be assessed : by equal shares or by metering
    b. Whether a charge for electricity can be added under paragraph 3(b), and
    c. Whether the site owner may amend the site rules by imposing a charge for parking an additional vehicle.

25. On the question of site rules, attention has already been drawn to the changes in the law introduced by the 2013 Act and the Mobile Homes (Site Rules) (England) Regulations 2014. Importantly, all pre-existing site rules would lapse in 2015 unless action were taken to consult under the new regulations and deposit a set of newly confirmed rules with the local authority.

26. The tribunal applies the presumption of legality, in which case it must be clear that some of the issues raised now were considered (or the owner and occupiers had the opportunity to consider them) just over five years ago.

27. *Water charges* — It is clear from site rule 7 that in the context of using hosepipes the issue of water metering at some stage was contemplated. The question is fairness as between site owner (1) and pitch occupiers (2), but also as between the various pitch occupiers. Until now the total bill (perhaps minus some items) was simply divided equally between the number of pitches, regardless of the number of occupiers, the frequency with which they bath, shower, wash their car or water their gardens.

28. Fairness as between the site owner and the pitch occupiers can be ensured by :
    a. No cost being incurred by the latter for installing the meters; and
    b. The site owner, as re-seller, complying with Ofwat regulations concerning pricing.

29. The respondent states that it intends simply to pass on the actual charge incurred by it, as calculated by the individual meter readings. A problem can arise where the meter readings taken by the utility supplier (Anglian Water/WAVE) differ by more than a few days from those individual readings taken by the site owner, but this is not insurmountable.

30. As appears from the evidence, quite a few of the occupiers – who perhaps may use less water than others – are keen on metering as that will reduce their annual outlay.

31. Despite this, there was some resistance. A second proposal was then advanced, that those who did not want meters would not have them imposed upon them, and could continue to pay an equal share of the balance after the total metered supplies was deducted from the utility supplier's bill.

32. Either of these scenarios is reasonable, and fair as between occupiers as well. No amendment to the agreement or site rules is required.

33. A question is asked about the ban on hosepipes if occupiers are already paying for the water. That is the problem. They may use the water but their neighbours, paying an equal share of the bill, may end up contributing to the true cost. With metering the actual cost is passed on to the actual user, and so the current site rule provides authority to the site owner to refuse permission to use a hosepipe to those who have an unmetered supply.

34. *Charging for electricity under paragraph 3(b)* — This charge is imposed under the express term in paragraph 3(b) in Part IV of the agreement, viz

> 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

35. Not only was this considered by the previous tribunal but so too did the Upper Tribunal (Lands Chamber) in the case of *Britanniacrest Ltd*[1], which was referred to by the tribunal in its decision. That was also discussed by the Court of Appeal in *P R Hardman & Partners v Greenwood & anor*[2], referred to by the adviser from the Leasehold Advisory Service in his email to the applicant, appearing in her bundle at [91].

36. On appeal from a decision (itself on appeal) of the Deputy President of the Lands Chamber, Sir Terence Etherton MR (with whom Davis and Underhill LJJ agreed) held, at [43] :

[1] [2013] UKUT 0521 (LC)

[2] [2017] EWCA Civ 52; [2017] 4 WLR 59; [2017] HLR 17

> The appeal turns on the proper meaning and effect of para.3(b) of Pt IV of the agreements. I consider it is clear that the "charges" mentioned in the second part of that paragraph are charges by third party utility suppliers and the "other services" mentioned are those provided by third parties in respect of third party utility supplies to the pitch. Payment for other third party contractors and for services undertaken by [the site owner itself] is not recoverable under para.3(b) but can be recovered only as part of the site fee.

37. Elaborating on that final point, Sir Terence said, at [49] :

> Such costs and expenses incurred by [the site owner], and remuneration for work carried out, are potentially recoverable as part of the site fee. Under the terms of the agreements the site fee is reviewable annually. Paragraph 20 of Ch.2 of Pt 1 of Sch.1 to the MHA provides that the presumption is that the pitch fee shall increase or decrease in proportion to the movement in the RPI. The increase in the pitch fee can be greater, however, if the presumption would produce an unreasonable amount. Paragraph 18 of Ch.2 specifies certain matters to which there must be paid particular regard in determining the amount of the new pitch fee but it does not provide that those are the only matters which can be taken into account on the review. Paragraph 18(1A) and para.19 preclude regard being paid to certain matters on the review but none of those are relevant to [the site owner's] costs and expenses and the other sums in issue in these proceedings.

38. The purported charge of £2.51 per month for electricity for "pumps/office" that was included in the pitch review form dated 28th April 2020 is thus irrecoverable under paragraph 3(b).

39. *Proposed site rule amendment concerning additional parking* — The site owner is seeking to change the site rules concerning parking. As noted by the previous tribunal, the current rules do not allow for the imposition of an additional charge.

40. As stated in regulation 4 of the Mobile Homes (Site Rules) (England) Regulations 2014 :

> (1) The matters prescribed for the purposes of section 2C(2)(b) are the matters set out in paragraph (2).
> (2) A site rule must be necessary-
> (a) to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers; or
> (b) to promote and maintain community cohesion on the site.

The burden of proof is upon the site owner, the party wishing to introduce the new rule or modify an old one.

41. The only evidence is from the applicant, saying that there are plenty of empty spaces in the main car park, and from Mr Brunning to the effect that many of his neighbours are permitted to park next to their homes but he is not, and that if he were so permitted then that would free up another space in the main car park.

42. The respondent has not adequately responded to these allegations, nor sought to justify this proposed rule change.

43. The tribunal has not carried out an inspection and viewing an aerial photograph on Google StreetView is not very enlightening. While the pitches appear quite cramped a walk around with a tape measure cannot be bettered. The tribunal

does not know whether parking next to homes is compliant with conditions 5.8 and 14.2 of the site licence, but if it is and such parking has been tolerated for years then (coupled with Mrs Kersey's assertion that the centre of the car park is largely empty) there appears to be insufficient evidence to prove that such a rule change is "necessary" to ensure that acceptable standards are maintained on the site (which will be of general benefit to occupiers); or to promote and maintain community cohesion on the site.

44. That part of the application is therefore upheld.

45. Other, more minor questions have already been addressed in this decision. The answers appear in paragraph 3 above.

46. Finally, as a general observation, park homes regularly generate disputes between site owners and occupiers. Often these arise due to the provision of insufficient information or to misunderstandings. They are often bedevilled by suspicions concerning the other party's motives. Some reflection, and legal advice, may help to resolve any future issues before they find their way back to the tribunal.

Dated 14th October 2020

Judge G K Sinclair
First-tier Tribunal Judge