FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM22UC/PHC/2022/0001**
Property	**:**	**Gosfield Lake Park**
Applicant	**:**	**Marie Collie**
Respondents	**:**	**Peter and Kelly Simmons**
Type of Application	**:**	**Determination under Section 4(1) Mobile Homes Act 1983**
Tribunal Members	**:**	**Judge Shepherd** **Marina Krisko FRICS**
Date and venue of Hearing	**:**	**5th October 2022 on line**
Date of Decision	**:**	**17th October 2022**

DECISION

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1. In this case the Applicant Ms Marie Collie ("The Applicant") is challenging the Respondents' (Peter and Kelly Simmons) charges in relation to water and sewerage rates at a park home site called Gosfield Lake. The application is dated the 18th of March 2022 and it relates to the Applicant's occupation of 72 Gosfield Lake Park, Church Road, Gosfield, Essex. This was the address of the Applicant's mobile home. She assigned her home on the 18th of March 2022 in order to take up occupation elsewhere.

2. The Applicant had occupied her mobile home for around 16 years. In her application she stated that she considered that she paid above the average cost for water usage and that the Respondents had been attempting to make money from residents such as introducing a hose pipe licence and applying for additional monies towards sewerage maintenance which assumed should be included in the pitch fee that is already paid. She suggested that she had felt intimidated by correspondence from Mr Peter Simmons one of the Respondents. She said that she had requested information from Mr Simmons in relation to the water usage but have not received satisfactory answers.

The strike out application

3. The hearing in this matter took place over two dates. The first hearing date was not effective because Mr Simmons had failed to provide any cogent evidence justifying the water and sewage costs which had been charged to the mobile home residents. At the first hearing Mr Simmons made an application to strike out the application on the basis that it had been made after the Applicant had assigned her mobile home. In fact, it was arguable that the application was made on the same day as the applicant left her home although the timings are not clear. It was Mr Simmons' contention that the jurisdiction of the Mobile Homes Act 1983 Section 4(1) ceases once the mobile home has been sold. In other words, the Applicant was precluded from challenging the water rates and sewerage rates after she had sold the premises. It appeared that Mr Simmons had been advised of this position by his solicitors and it was essentially their argument he was advancing. The application was made initially in writing to the Tribunal. The Tribunal determined that the application should be heard at the hearing although there was an initial indication that the strike out application would be rejected.

4. Under Section 4(1) of the Mobile Homes Act 1983 it states the Tribunal has 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*. Under section 1(1) of the same Act it states that the act applies to *any agreement under which a person (the occupier) is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as his only or main residence*.

5. Mr Simmons argued that the Applicant did not have the benefit of any agreement to which the Act applied because she had assigned the agreement to station a mobile home on pitch 72 to Mr Niall and Ms Power on the 18th March 2022 therefore the relevant agreements to which the Act applied inured for their benefit on the 18th of March 2022.

6. At the reconvened hearing the Tribunal indicated that the strike out application would be rejected and that written reasons would be given in this determination.

7. The Tribunal rejects the strike out application for the following reason. Even if the application was made after the assignment was completed, which is not entirely clear, the protection of the Act must apply until the date of the assignment and the Applicant must be entitled to make an application in relation to the period that her agreement was in force. Just as she would be the party to pursue for unpaid pitch fees even after an assignment has taken place she must be entitled to challenge charges made to her during the tenure of her occupation.

The water and sewerage charges

8. At the initial non-effective hearing Mr Simmons was ordered to provide relevant documents which justified the water and sewerage charges he and his sister had been making for the period 2016 to date. He provided this evidence by e-mail on the 28th of September 2022. In his e-mail he stated that he did not have any documents dating back to the years 2016 to 2018 because the site was owned by his mother Mrs M Simmons and she did not provide any documents to him or his sister which justified the water charges and all the business bank accounts were closed which were in her sole name. He said that they had opened new bank accounts and new accounts with suppliers including supplies of water and electricity in their names only. He said that he was providing all copy invoices from early 2019 to date which had been paid in full in respect of the provision of water and sewerage services to residents on the park and the costs associated with the continuous supply and maintenance of these services. He said that there is a sewage pumping station which is part of the infrastructure which supplies the sewerage services which requires electricity to power it in respect of which there was a separate electricity metre. He also said there was a cost of a phone SIM card contract which was connected and wired into the pumping station so that when a fault was picked up it sent him a text message automatically.

9. The documents provided broke down into various headings. The Applicants did not challenge the totals. The totals were the following:

- Water and sewerage £60,028.70
- Electricity £3910.54
- Maintenance £26,320.09
- Lebara phone SIM £94.80
- Admin £5 per home each year £1093.33

10. This equated to a total cost of £91,447.46. Aside from the admin charge which is discussed further below the amounts paid appeared to be justified by the documents provided by Mr Simmons.

11. In his e-mail Mr Simmons declared the total amount paid to him from all residents was £126,604.80. He said that the difference between the amount collected and the amount paid was £35,157.34. He divided this sum into 42 months (the period during which evidence was provided) which made a total of £837 pounds per calendar month divided into 64 homes was £13.07 per calendar month overcharge. He said he did not see this as overcharging but the calculations had been made incorrectly when sending pitch fee notices out. He said he would write to all residents to notify them of this mistake and calculations would be done differently when making increases on pitch fee review forms and water and sewerage increases.

12. For her part the Applicant was concerned particularly about the fact that the water and sewerage charges much of which involved maintenance of the infrastructure had not been included in the pitch fee amount. This appears to be a justifiable concern indeed there was a letter from the solicitor acting for the mother of the Respondents which dated the 20th of May 2015 which stated clearly: *you pay the pitch fee each month the cost of maintaining the sewerage infrastructure and pumping station is included within the pitch free. If Mrs Marie Simmons has asked you for a contribution towards the maintenance costs of the infrastructure this would have been wrong because maintenance of the sewerage infrastructure is included within the pitch fee. However, they are not asking for this.* Mr Simmons denied any association with this advice. He said the park home was not owned by him when the letter was sent out. The Tribunal were not impressed by this stance. It seems very likely that Mr Simmons was in fact aware of this advice. In any event it would be surprising if his own solicitors had not given the same advice.

The written statement

13. The written statement which was in effect the agreement between Mrs M Simmons and the Applicant contained the following provisions:

The Occupy undertakes with the owner as follows:-

(a) To pay to the owner an annual pitch fee of X subject to review as every August every year hereinafter provided by equal 1 monthly payments equals X payments in advance on the first day of each month.

(b) to pay and discharge all general and all water rates which may from time to time be assessed charged all payable in respect of the mobile home all 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.

14. Accordingly, the site owner is entitled to charge a pitch fee as well as the proportionate part of the cost of other essential services including one would assume water and sewerage charges. By a series of pitch fee revues carried out by Ms Simmons and the Respondents the pitch fee was increased on each occasion based solely on the retail price index adjustments. All of the pitch fee review forms the tribunal were provided with included the same adjustment which self - evidently means that the Respondents did not include other charges such as maintenance and repair of the water and sewerage infrastructure in the pitch fee. This is further clarified by the fact that in Section 4 of the pitch fee review form there is a calculation of the proposed new pitch fee. Nothing is recovered under the heading *recoverable costs* which is where such repair and maintenance costs would be in or should be included.

15. The provision in the agreement requiring the site occupier to pay for outgoings would appear at first glance to relate solely to services such as water and sewage supply rather than repair of the infrastructure. If this is the correct then the charges made for repair and maintenance of the infrastructure have been wrongly allocated and should have been included within the pitch fee calculation. If it were the case that these costs had been included in the pitch fee charge as well then there would be a situation of double counting but as already indicated the pitch fee has not included any of these additional costs but is solely increased on the basis of the RPI adjustment. Therefore, there has not been any identifiable double counting.

Determination

16. The Respondents have eventually provided a lot of evidence which appears to support to some extent the charges made. The calculations made by the Respondents are random and to some extent self-serving. It is not clear for instance whether occupiers had been informed of the charge that is being made for the management of the sewage and water charges. The occupiers ought to be kept informed of these charges if they are being made. The mechanism for doing this is through the pitch fee review. Indeed, all of the charges outside of the services provided ought to be included in the pitch fee review. If this were done properly occupiers would then have the right to challenge that charge once the costs had been transparently declared. In the event it appears on their own evidence the Respondents have over charged residents by £37,800 which is a significant sum.

17. The water bills on their own which by unit amount to sums of around £150 -£200 per annum appear reasonable. Indeed, all of the invoices provided appear to be allowable costs under the agreement although as already indicated some should be charged under the pitch fee rather than under the service costs. The costs in the invoices also appear to be reasonable for the work carried out. It is no doubt that a mobile home site with its own sewerage provision will incur extra costs in relation to collection of the sewerage and repair and maintenance of the sewerage infrastructure etc. The cost incurred by the Respondents appear to be legitimate costs there does however remain concern about the way in which the costs are recovered from the mobile home owners.

18. The Tribunal is limited in the determination it can make due to the lack of clarity in the evidence. Doing the best we can we determine that on the Respondent's own evidence there has been an overcharge and the Applicant needs to be reimbursed by

the amount over charged to her of £549.33 (i.e the overcharge of £35157.34 divided by 64 units).

19. For future reference the Tribunal considers that the Respondents need to have a major overhaul of the way in which they are carrying out their accounting for the site. It is necessary to properly delineate which costs are rightly to be charged to the pitch fee and which costs are allocated to the services. This would avoid complications in the future of the type that have existed in the present case. Whilst the Respondents' charges are largely justifiable there does appear to be some retrospective justification on their part which is not really, satisfactory. They need to be able to demonstrate exactly how much they have spent and what they have recovered from the homeowners in relation to that spending. The way in which to do this is to include all of the relevant costs in the pitch fee save for other services which they pay on behalf of the residents.

20. In summary the tribunal determines that the Respondents should repay the Applicant the sum of £549.33.

Judge Shepherd

17th October 2022