



**FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : MAN/00EJ/PHC/2023/0005

Property : Finchale Abbey Village, Brasside, Durham
DH1 5FY

Applicants : Various Residents at Finchale Abbey Village listed
in the attached Schedule

Respondent : EB & CA Welsh Limited

Type of Application : Determination under section 4, Mobile
Homes Act 1983 (as amended)

Tribunal : Tribunal Judge L Brown;
IR Harris, MBE, FRICS (Valuer Member);
K Usher (Lay Member)

Date of Decision : 9 May 2024

AMENDED DECISION

DECISIONS

- (i) The Respondent is not entitled to charge the Applicants service and administration charges for LPG, or LPG tank rental;
- (ii) The sum of £3.00 per month for service and administration charge and such sums, plus VAT, as paid by each Applicant to the Respondent for LPG tank rental, which Applicants have paid from and including March 2022 to date for such sums are repayable by the Respondent;
- (iii) The application and hearing fees, totalling £300, are to be paid within 28 days by the Respondent to the Applicants (to the person who paid those sums to HM Courts and Tribunals Service).

REASONS

Background and hearing

- 1. The 9 Applicants occupy 9 lodge pitches at Finchale Abbey Village, Brasside, Durham DH1 5FY (“the Park”). The Park was developed by the Respondent in 2004.
- 2. The Park consists of 81 pitches, of which there are 64 lodges. The owners of pitches are referred to in this decision as pitch holders.
- 3. The Applicants each brought an (Amended) Application dated 15 February 2023 and agreed that their Lead Applicant should be Miss Jane Walker, the owner of pitch 53.
- 4. The Tribunal made directions on 23 October 2023 and a hearing took place on 8 February 2024 at North Tyneside Magistrates Court. The parties each submitted a bundle of documents for the hearing. Each Applicant presented a written statement and were in attendance. Miss Walker principally spoke on their behalf, but all had the opportunity to make oral contributions. The Respondent was present through its Directors, Mrs Ann Watson, Mrs Charlotte Brown, Mrs Zoe MacDonald and Mr Michael Welsh, each of whom had provided a written statement and spoke for the company. All statements contained a statement of truth and were signed and dated.
- 5. Copies of the Written Statement under the Mobile Homes Act 1983 (as amended) (MHA) regarding the pitch of each Applicant were before the Tribunal.

The Issue

- 6. The Applicants applied to this Tribunal for a determination as to whether they were obliged to contribute towards the costs incurred by the Respondent in
 - i) Service and administration charges for LPG;
 - ii) LPG tank rental

(LPG being liquified petroleum gas)

7. The Tribunal's jurisdiction stems from section 4 of the 1983 Act, which provides that in relation to a protected site the tribunal has jurisdiction to determine any question arising under the Act or any agreement to which the Act applies, other than termination by the site owner.

Application and hearing

8. The Applications identified the orders being sought from the Tribunal as:

“(i) We request the Tribunal order the above charges from March 2022 to date be refunded as our Written Statement clause “pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner” limits the charge the Site Owners may make in respect of LPG to a unit charge equal to the cost they themselves have incurred for the LPG supplied to them.

(ii) We request the Tribunal order the retrospective charges deducted from the calculation of the resident's utilities overcharge repayment be refunded.

(iii) We request the Tribunal to consider whether it was lawful to threaten to disconnect residents from the bulk tank supply.

(iv) Should the tribunal decide in the applicants favour, would they also consider awarding the applicants the cost of their application against the park owner as we have provided the site owners with the previous decisions from the Tribunal regarding an admin and service charge and asked them to voluntarily drop the charge.”

9. In support, the following was presented:

“In January 2022 the Site Owners admitted overcharging on both electricity (average of 26% per annum between July 2015 and February 2022) and LPG (average of 30% per annum between July 2015 and February 2022). Significant repayments were made to residents in May 2022 although the nature and components of the overcharge were never explained.

Instead of dropping all overcharges the Site Owners are continuing to charge £3 per month for LPG Administration and Service Charges on current bills and a variable amount for tank rental apportioned across residents in proportion to usage. In line with Court of Appeal Case No: C3/2016/0126; (PR Hardman and Partners (Shortferry) vs Greenwood and ANR) 10 February 2017 and case reference MAN/00EF/PHC/2020/0003 (Leven View Residential Park) we maintain that these charges are not allowable as they are already paid for in the Pitch Fee.

In addition the Admin and Service Charge would represent an unregulated amount being charged and, as recorded in the case of Britaniacrest (2013) (UTLC Case Number: LRX/14/2013) the Site Owners in the future could charge any sum they chose which is different from the tightly controlled regime for increasing pitch fees.

The Site Owners threatened to disconnect residents from the bulk LPG supply if they did not agree to pay the Admin and Service charge. The Applicants believe we are paying for the maintenance of the supply equipment in their pitch fee under the Express Term in our Written Statement saying the Pitch Fee includes "Maintenance of LPG gas and electricity supply equipment". We are, therefore, entitled to be connected to that supply equipment so long as we continue to pay for the LPG used. The Applicants also believe this was a threat to our right to quiet enjoyment. With regard to the retrospective charge made when the Site Owners calculated our refunds for the previous overcharges, we were forced to sign a document saying "this is a one-off payment in full and final settlement of any claim". We are querying the lawfulness of this given the Site Owners are maintaining that our acceptance of this deduction also implies our acceptance of changes to the current charges. The amount of refund involved was so significant that most residents did not want to risk losing what they had been offered to further challenge the retrospective Admin and Service Charge so felt compelled to sign this agreement. Advice on the LEASE website says one of the definitions of harassment under the Mobile Homes Acts is "Park site owner forces the resident to sign an agreement to sign away their legal rights" and believe this is a fair representation of how we, as residents, were treated."

10. The Tribunal had before it comprehensive statements of case and witness statements from the parties, in addition to their documents. It is not intended to record here all of the points presented or submissions made, but only those matters to explain the basis of the Tribunal's decision. If we do not record all representations it should not be thought that we have ignored any.

11. In May 2022, as a result of an over-charging method for electricity and LPG, the Respondent made refunds to the pitch holders, who each entered into a settlement agreement. However, the Applicants complained that they continued to be charged £3 per month (comprising £2.50, plus VAT) for LPG administration and service charges and a variable amount for tank rental, apportioned between pitch holders according to usage, plus 5% VAT. The Applicants' position was that these charges were also paid for in the pitch fee within the cost for maintenance of supply equipment. In addition, they argued that the charge was unregulated and therefore unrecoverable by the Respondent.

12. The Respondent undertook a consultation with pitch holders. They were offered the choice of continuing to receive LPG, paying the administration charge, or to be supplied with bottles of gas. 82% of responders agreed to pay the admin charge on an ongoing basis to receive LPG.

13. The Respondent explained that it enters into annual contracts with Calor for supply of LPG. The unit price for the gas is fixed for 12 months (1 November to 31 October) and is passed on to the pitch holders. There is a separate annually fixed standing charge by Calor for maintenance and supply of the gas tanks, likewise passed on.

14. The fee of £3 per month is in respect of the Respondent, maintaining and reading meters monthly at each pitch, negotiating renewal charges for LPG and related services (thus avoiding variable charges applying) and preparing and issuing statements.

The Written Statements

15. The law relating to Written Statements is set out at section 1 of MHA. The Written Statements were largely similar in material respects for each Applicant, save for the start date, a variation in the pitch fee dependant on the size of the pitch, and the address and description of the relevant park home.

16. The content of the Written Statements was not in dispute. The Applicants highlighted to the Tribunal the following provisions, as pertinent:

- a) In some Statements, after stating the amount of the pitch fee there is recorded that “water” and “sewerage” are included in the pitch fee;
- b) In other Statements there appears *“The following services are included in the pitch fee Water, Sewerage, street lighting, grass cutting, maintenance of LPG gas and electricity supply equipment and roads and security.....”*

An additional charge will be made for the following matters Gas & Electricity.....”

Within Implied terms -

- c) Within Occupier’s obligations – to *“.....pay to the owner all sums under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner.....”*

Within Owner’s obligations to

- d) *“be responsible formaintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home.”*

Within Express terms –

- e) The Site owner is obliged to *“....do everything they can reasonably do to provide and keep the services available to the pitch. However the site owner will not be responsible for any temporary failure.....outside their control.”*

17. The Tribunal also noted, *“Pitch fee”* is defined to exclude *“.....amounts due in respect of gas, electricity.....or other services, unless the agreement expressly provides that the pitch fee includes such amounts.”*

18. The Applicants relied in particular upon the following case law: PR Hardman and Partners (Shortferry) v Greenwood and ANR [2017] EWCA Civ 52 (Court of Appeal, confirming the decision of the Lands Chamber of the Upper Tribunal ([2015] UKUT 0587) and Walker and Others v Crown Park Sales Limited

MAN/00EF/PHC/2020/0003 – as authority that charges already paid for within a pitch fee cannot be further charged; Britaniacrest Limited re Broadfields Park [2013] UKUT 0521 (LC) - denying charges being raised for administering the supply of gas and electricity which were included in the pitch fee.

Determination

19. We found that the facts of this case are similar to those of the Shortferry case referred to above, which effectively guides the Tribunal to look at the express terms of the Written Statement(s) and interpret them.

20. The Tribunal undertook interpretation of the provisions in the Written Statement of each Applicant. We found it to be unequivocally recorded that the Respondent is only able to recover expenditure on service and administration charges for LPG and the LPG tank rental through the pitch fee. That is the effect of the provisions in the Written Statements referred to above in 16 b) and in the alternative 16 d). We found no statutory or contractual basis for the recovery of those expenses as additional charges.

21. Our finding was that the obligations upon the Applicants regarding payment of the costs of “gas” are limited to the actual cost of the supplied fuel and related standing charge of the supplier. We found that the standing charge was separate from the LPG tank rental sum. The Respondents could not refer the Tribunal to any provision permitting charging of an additional sum for the items identified in paragraph 6 i) and ii). They are not recoverable from the Applicants other than through the pitch fee, which is reviewed periodically as permitted by law.

22. Regarding refunding of sums paid, those which were the subject of the settlement agreement (see paragraph 11) are unaffected by this decision. The Tribunal understood that the settlement agreement concerned monies including to February 2022. Those paid since – i.e. from March 2022 to date - are repayable by the Respondent to the respective payer Applicants.

23. The Applicants’ points regarding an alleged threat to disconnect the fuel supply to the Applicants was irrelevant to our determination and is not a matter for the Tribunal in this case.

Costs

24. The Applicants claimed the fees paid to the Tribunal regarding these proceedings. They have been successful in their application and therefore the Tribunal exercised its discretion to award them refund of the application and hearing fees, totalling £300, to be paid within 28 days by the Respondent to the Applicants (to the person who paid those sums to HM Courts and Tribunals Service).

L Brown
Tribunal Judge