**First-tier Tribunal**
**Property Chamber**
**(Residential Property)**

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| **Case reference** | **:** | **CAM/22UE/PHC/2017/0007** |
| **Site** | **:** | **Kings Park Village,<br>Kings Park,<br>Canvey Island,<br>Essex SS8 8HE** |
| **Park Home address** | **:** | **R1111** |
| **Applicant<br>Represented by** | **:** | **Kings Park Village LLP<br>Mr. J. Clement, solicitor advocate** |
| **Respondents<br>Represented by** | **:** | **Barry Lovett & Patricia Stephens<br>Barry Lovett** |
| **Date of Application** | **:** | **21st June 2017** |
| **Type of application** | **:** | **to determine questions arising under the Mobile Homes Act 1983 ("the 1983 Act") or the agreement to which it applies** |
| **The Tribunal** | **:** | **Bruce Edgington (lawyer chair)<br>Stephen Moll FRICS** |
| **Date and Venue for Hearing** | **:** | **10th November 2017 at The Court House, Great Oaks, Basildon SS14 1EH** |

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# DECISION

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1. The questions raised by the Applicant for determination by this Tribunal, and the decisions of the Tribunal are:-

   **Question:** "That under the Implied Terms of the Mobile Homes Act 1983 as amended, the Respondents are liable to pay the Applicant an infrastructure charge, water company standing charge and an administration charge in addition to the pitch fee"

   **Decision:** The Tribunal's determination is that the infrastructure charge, the water company standing charge and the administration charge claimed by the Applicant are all payable by the Respondents and other pitch fee payers on the site in circumstances such as in this case where the express terms of the occupation agreements provide for such payments.

## Reasons

### Introduction

2. The Tribunal is being asked to say whether the Respondents are liable to pay the various costs set out in the decision towards the maintenance of the water and sewerage system on the site. Kings Park is the largest park home site in the country covering some 70 acres. It is very flat which means that the provision of water and the collection of and removal of sewerage is complex with no less than 15 pumping stations.

3. The occupation agreements for the pitches on the site say that in addition to pitch fees, the site owner can collect monies in respect of water and sewerage i.e. an infrastructure maintenance charge, a water company standing charge and an administration fee. A small number of pitch fee payers say that such monies cannot be payable and this case has really been brought as a test case.

4. As it happens, the Respondents themselves do not suggest that they do not have to pay water and sewerage charges plus an administration fee. They say that they are not liable to pay an infrastructure charge which covers the cost of maintaining the underground pipes and pumping stations. To put this into context, the evidence is that for the 4 months from 1st October 2016, a demand (page 13 in the bundle) was made for £88.55 for water and sewerage of which £11.15 plus VAT was the infrastructure maintenance charge.

5. In view of the complexities of the system, the Applicant says that it has always made a separate charge for infrastructure maintenance since 1992 and this is specifically referred to in the occupation agreements.

### The Occupation Agreement

6. A copy of an occupation agreement commencing on the 19th March 2007 has been produced. This was assigned to the Respondents on the 28th January 2013. The relevant clauses are clause 9 of the express terms (page 81 in the bundle) and in respect of the terms implied by the 1983 Act, clauses 21 (page 88), 22 (page 89) and 29 (page 91). The relevant parts of those clauses say:-

Clause 9 – "*An additional charge will be made* (to the pitch fee) *for the following matters*

1. *Water*
2. *Sewerage*
3. *Infrastructure charge (upkeep & maintenance of all underground current water pipes from park entrance and leading to the home and Pumps)*
4. *Water Companies standing charge*
5. *Administration charge*

Clause 21 – "*the occupier shall….pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner*"

Clause 22 – "*the owner shall 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*"

Clause 29 – "*'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*"

7. None of the amendments to the implied provisions stated were affected by The **Mobile Homes Act 2013.**

**Site Inspection**

8. The members of the Tribunal did not inspect the site or the pitch in view of the particular dispute in this case. The parties were notified of this and none requested a site inspection.

**The Law**

9. Section 4 of the 1983 Act gives this Tribunal the power "*to determine any question arising under the Act or any agreement to which it applies*". Enforcement is a matter for the County Court.

**The Hearing**

10. The Tribunal had indicated that it would be prepared to deal with this dispute on a consideration of the papers and the parties' written representations. However, the Respondents asked for an oral hearing as is their entitlement. The hearing was attended by Mr. Michael Prideaux from the site owner Applicant and their solicitor, Mr. J. Clement. The Respondent, Barry Lowett attended as did Ian Grimsey who said that he was an observer. He contributed to the discussions without objection from anyone else. Indeed the whole hearing was conducted in what can only be described as a friendly and civilised fashion and the Tribunal thanks those present.

11. The essence of the Respondents' case is that the water and sewage pipes together with the network of pumps etc. are part of the site and, as such, should be maintained at the cost of the site owner. A complaint had been made to Mr. Prideaux and, during the meeting between Messrs. Prideaux and Lowett, Mr. Prideaux had referred to this issue as being 'a grey area' which should be resolved. This seems to have been interpreted as an acceptance that the legal position was not clear.

12. When addressing the Tribunal, Mr. Prideaux accepted that he had used such language but the reason for that was that there were a number of occupiers (less than 10) who refused to pay these charges and he was merely suggesting that the issue ought to be sorted out once and for all. He was not accepting that there was any doubt about the legal position.

13. It was pointed out that at page 153 in the bundle, it seemed clear that blockages of pipes had occurred in respect of identified park homes and the Respondents' view was that the cost of clearing such blockages should be down to the park homes involved. The answer to that was (a)

that these costs were only a small part of the total and (b) the 'allocated' park homes were not necessarily responsible. The way of recording these incidents was to just identify the nearest park home to the blockage without tracing the blockage back to a particular pitch.

14. It was also pointed out that the site owner provided other facilities on the site such as the supermarket, the bar, the launderette etc. and why weren't those facilities contributing? Mr. Prideaux's response was to say that they were and he referred to the list on page 154 which showed the relevant proportions paid by each of the other users.

15. It was also added on behalf of the Applicant that it charges no more than the actual costs incurred. Mr. Prideaux said that the Applicant goes out to tender every 3 or 4 years to make sure that the costs are competitive. He pointed out that there had been no substantial problems to the system as a whole within the last 10 years.

16. Mr. Clement went through the law which was obviously known to the Tribunal. He pointed out also that the OFWAT guidance at page 170 in the bundle says specifically that site owners can recover maintenance costs but OFWAT does not "*encourage it*".

**Discussion**

17. The facts in this case as outlined in the introduction are not disputed. The answer to this question is really a matter of law only. The occupation agreements clearly say by way of express terms that all these monies are payable, if claimed. The question is (a) whether any statute, regulation or authoritive guidance makes it clear that such an express term must be ignored or (b) whether it is an unfair contract term. It has long been held that the unfair contract term regulations apply to leases and this Tribunal considers that they also apply to occupation agreements.

18. In their written statements of case, the Respondents say that they rely upon (a) a letter from Brandon Lewis MP, the Secretary of State for Housing and Planning, to Rebecca Harris MP dated 18th May 2016 (page 137 in the bundle) and (b) the site rules for the park. The letter merely says "*that the site owner is responsible for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home*". That is agreed, but there is no express or implied suggestion that the cost of complying with that responsibility is not recoverable.

19. The site rules do not really help. There is no dispute that the pipework and pumps involved are part of the site and are owned by the site owner. They must be provided by the site owner as part of its obligations to supply services such as water and sewerage to each pitch. There is no argument about that. The only argument is about whether the occupiers have to contribute to the costs involved. Under the terms of the occupation agreements, they must.

20. There is nothing in the 1983 Act, subsequent Acts, regulations or guidance which prevent these charges being made. The 'indication' by

OFWAT that it does not encourage the passing on of expenses does not assist because of the express terms of the contracts.

21. The Tribunal did consider whether it could be said that this was an unfair contract term. However, in view of the particular circumstances here where the size of the site coupled with the flat nature of it mean that providing water and sewerage services is not straightforward and the charges merely reflect the costs, it cannot really be suggested that this contract is 'unfair' in the legal sense of the word.

**.....**
**Bruce Edgington**
**Regional Judge**
**13th November 2017**

## ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.