FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/30UL/PHC/2015/0004**
Property	**:**	**96 SHIREBURNE PARK, WADDINGTON, CLITHEROE BB7 3LB**
Applicant	**:**	**MRS ROSALEE ANTOINETTE STEVENSON**
Respondent	**:**	**SHIREBURNE PARK LIMITED**
Type of Application	**:**	**MOBILE HOMES ACT 1983 – Section 4**
Tribunal	**:**	**Mrs A M Davies, LLB** **Dr J M Howell**
Date of Order	**:**	**3 August 2015**

DECISION

ORDER

1. The Applicant's Written Statement signed by her on 21 April 2014 is correct as drawn.

2. The Pitch Fee Review Form served on the Applicant by the Respondent on or about 1 November 2014 shall be amended by the substitution of 1st March 2014 for 1st December 2013 at section 2 and the substitution of 1st March 2015 for 1st December 2014 at section 3.

3. The Applicant shall not be obliged to contribute to the written down capital cost of water treatment and sewerage plant as part of the charges for supply of water and sewerage services on site.

4. The Respondent's apportionment of charges for water supply and sewerage services on site is reasonable and acceptable for the year ending 28 February 2016.

5. The Respondent shall reimburse the application fee paid by the Applicant, in the sum of £155.

REASONS

BACKGROUND

1. Shireburne Park is a mixed residential park home and holiday site, built in the grounds of a manor house which now contains 5 holiday flats. The holiday area of the site is being extended and developed, with the addition of pitches and associated infrastructure. The residential park homes area (which also contains some 7 pitches used for holidays) is a wooded site dating back to the 1950s.

2. The Park was formerly managed by the father of Mrs Rostron, one of the owners of the Respondent company. She and her husband took over management on her father's death some three years ago, and have been bringing the facilities on the Park up to date.

3. Meanwhile it seems that the park residents, represented by Residents' Association, were advised that they qualified for the protection of the Mobile Homes Act 1983 as amended (the Act), and in 2013 a number of residents including the Applicant applied to the Tribunal for the issue of Written Statements.

LEGAL STATUS

4. The Respondent instructed Tozers to advise them, and on 9 December 2013 Tozers wrote to the Applicant (as secretary to the Residents' Association) outlining a settlement proposal they intended to put to each of the applicants in the 2013 Tribunal proceedings. Tozers envisaged that on acceptance of their proposal they would write to each applicant with "*a copy of the written statement adapted to their particular caravan/pitch and seeking individual confirmation of the settlement terms*." In the event, however, the matter was dealt with by way of a Settlement Agreement. In March/April 2014, after negotiation as to its terms, the Settlement Agreement was signed by each applicant to the 2013 proceedings including the present Applicant Mrs Stevenson, and was subsequently signed by the Respondent in April 2014.

5. The Settlement Agreement has 5 schedules. The second schedule is a blank copy of the form of written statement as it appears when downloaded from internet sources, and the Settlement Agreement provided that this form would be accepted by all parties. Somewhat unfortunately, paragraph 7 of the "blank" written statement, as downloaded, reads "*The following services are included in the pitch fee: Water Sewerage (cross out the services which are not include and add any others which are included in the pitch fee)*" As the form

of Written Statement at schedule 2 of the Settlement Agreement was left blank, the words "Water" and "Sewerage" had not been crossed out. However paragraph 5 of the Settlement Agreement stated

"Each Written Statement shall specify in Part 2:

5.1 In paragraph 2 that the parties are the Respondent and the particular Applicant;

5.2 In paragraph 3 that the agreement will begin on 14 May 2014;

5.3 In paragraph 4 that the particulars of the pitch are the address stated by the Applicant in their application in these proceedings;

5.4 In paragraph 7, that pitch fee will be payable annually on 1 December and that no charges are included in the pitch fee;

5.5 In paragraph 8 that the pitch fee review date shall be 1 March in each year;

5.6 In paragraph 9 charges for electricity, water and sewerage;

5.7 In paragraph 10 the maximum number of people permitted to occupy the home in accordance with the manufacturer's recommendations;"

Paragraph 9 of the Written Statement reads "*An additional charge will be made for the following matters ..... (List the matters for which an additional charge will be made)".*

6. A few days after the Settlement Agreement had been sent to Tozers, signed by each resident who was a party to it, the Applicant received a completed copy of her Written Statement signed on behalf of the Respondent, which she and her husband then also signed. The Written Statement reflected the Settlement Agreement in providing that water and sewerage charges would be payable in addition to the pitch fee. The Applicant wrote to the Respondent about the dates given as pitch fee review dates in the Statement, which she considered were wrong, but at the time she did not object to anything else in the Written Statement. In fact, her subsequent correspondence by email with the Respondent about the separate water and sewerage charges clearly shows that she understood and accepted that she would be liable for them.

7. The express and implied terms contained in the Act, the Settlement Agreement, and the Applicant's Written Statement therefore governed her relationship with the Respondent from April 2014.

THE APPLICATION

8. In November 2014 the Respondent notified the Applicant (and the other residents on site) that the annual pitch fee was to increase by a percentage equivalent to the relevant RPI figure and that the annual charge for water and sewerage was to increase by £100.25, from £245.87 to £346.12.

9. On 24 March 2015 the Applicant lodged the present application, having tried but failed to obtain detailed information from the Respondent about the charges for water and sewerage. The application referred to 6 issues for determination by the Tribunal.

10. A timetable was set out in directions given on 24 April 2015. The Tribunal inspected the site on 3 August in the presence of Mr and Mrs Rostron, their solicitor Mr Kelly, the Applicant, and Mr Ian Pye the chairman of the Residents' Association. Other than during occasional breakdowns when a local utilities provider supplies water, water used at Shireburne Park is obtained from boreholes on site. Sewerage is also dealt with on site, with collection tanks, a treatment plant, and controlled discharge into a watercourse. During its inspection the Tribunal saw the water treatment plant in operation.

11. At a hearing later the same day Mr Tweddle of IPHAS attended to represent and assist the Applicant. The Tribunal had the benefit of reading the parties' documents and statements of case. Approximately 7 days prior to the hearing, the Respondent had produced a statement by Mr Rostron with additional

documentation, intended to clarify and further explain the charges. Despite the Applicant's written objection to this late statement, Mr Tweddle confirmed that the Applicant had had time to read and digest it, and that the information in it had been helpful. It was therefore agreed that the statement would be included in the evidence to be taken into account by the Tribunal, although served late.

ISSUE 1: STATUS OF THE WRITTEN STATEMENT

12. The Applicant claimed that she had not understood, on receipt of her Written Statement, that it provided for water and sewerage charges to be paid in addition to the pitch fee. The Tribunal does not accept this claim: the documents and correspondence produced at the hearing indicate that the Applicant either was or had every opportunity to be fully aware of the meaning and consequences of the Settlement Agreement she had signed. Specifically, the Tribunal rejects the Applicant's claim that her Written Statement "*was altered without consultation in contravention of the undertaking given in the Settlement Agreement*." For the reasons given at paragraphs 5 and 6 above, the Applicant's signed Written Statement is effective as drawn.

ISSUE 2: THE PITCH FEE REVIEW FORM DATED 1 NOVEMBER 2014

13. Historically, Shireburne Park has an arrangement whereby the pitch fee for the year starting 1 March is reviewed in or about the previous November, and is payable in full on 1 December, ie 3 months before the start of the year to which it relates. The Settlement Agreement provides that in a suitable case, the Respondent will consider accepting payment by instalments to avoid financial hardship to any particular resident.

14. On 1 November 2014 the Respondent served a Pitch Fee Review Form on the Applicant, for the pitch fee year starting 1 March 2015. At section 2, the form reads:

"*We propose to increase your pitch fee ……. The last review date was 1st December 2013. The current pitch fee is £1892.13 per year. The proposed new pitch fee is £1935.65.*"

And at section 3 the form provides "*the proposed pitch fee will take effect on the review date on 1st December 2014.*"

The Applicant wrote to the Respondent on 12 November querying these dates and pointing out that whereas the date 1 March was not mentioned in the Pitch Fee Review Form, according to her Written Statement the relevant dates are stated as

Section 7: "*the pitch fee will be payable from 1st December annually*"

Section 8: "*the pitch fee will be reviewed on the following date each year 1st March*".

15. Mrs Rostron for the Respondent initially agreed to write to all residents confirming that the pitch fee year started on 1 March, but by the time of the hearing she had not done so and Mr Kelly for the Respondent argued that the Pitch Fee Review Form was correct, if read in conjunction with the Written Statements and/or Mrs Rostron's letter of 20 November 2014 addressed to the Applicant. The Tribunal took the view that the Review Form should be clear without reference to other documents, and after discussion at the hearing it was agreed that "*the last review date*" at section 2 should be 1st March 2014 and the date on which the new pitch fee will take effect at section 3 should be 1st March 2015. The date on which the relevant RPI percentage is calculated (October in each year) and the date on which payment is due (1st December) are an arrangement between the parties but irrelevant so far as the Review Form is concerned. The parties' agreement will ensure that there is no apparent discrepancy between the Pitch Fee Review Form and the Written Statement.

ISSUE 3: RESPONSIBILITY OF THE RESPONDENT TO MAINTAIN WATER AND SEWERAGE SERVICES under paragraph 22(c) chapter 2 of Schedule 1 to the Act

16. This is an issue as to who is to bear the cost of maintenance of the water supply and sewerage, and is more conveniently considered with the issue below.

ISSUE 4: THE COSTS OF WATER SUPPLY AND SEWERAGE TO BE BORNE BY THE APPLICANT

17. In order to provide borehole-sourced water for human consumption the Respondent has recently been required to meet additional standards under the Private Water Supplies Regulations 2009. At least partly as a result of the cost of the additional work, for the year March 2015 to February 2016 the Respondent charged the Applicant an additional £100.25 for supply of water and sewerage services. On 2 December 2014 the Respondent sent the Applicant a breakdown of its charges for water and sewerage for the coming year as follows

		£
Water:	water softener	2443.80
	Dales water services (breakdown cover)	2547.88
	United Utilities standing charge (for emergency supplies)	145.00
	Cost of plant (written down over 25 years)	1080.00
	Electricity (for running the pumps)	1322.00
	Testing/monitoring (in-house costs at 2 hours per week)	2080.00
	Water leak repairs (in-house costs, estimated)	600.00

		£
Sewerage:	S&S Services (septic tank clearance)	8197.80
	Electricity (for pumps)	9681.00

Cost of plant (written down over 40 years)	1600.00
Monitoring, unblocking, testing (in-house at 4 hours per week)	4160.00
Environment Agency (discharge permit fee)	4104.00

Of these, the Applicant objected to pay for cost of plant, leak repairs, monitoring and unblocking the sewerage tanks, testing and monitoring the drinking water, and paying the Environment Agency fee. The ground for objection was that these were overhead costs of running a business, and were a responsibility of the Respondent because they were incurred in order to maintain eligibility for the park licence. In respect of the electricity charges, the Applicant acknowledged an obligation to pay but did not agree the amount. The electricity supply to the water treatment and sewerage plants is not metered, and therefore has to be estimated.

18. The Tribunal was provided with the comparative figures for 2012/13 and heard from Mr Rostron how he had calculated the cost of electricity. After hearing the evidence the Tribunal concluded that, apart from the written down cost of plant, the Applicant is liable to contribute to all the listed costs, which are essential running costs of providing the service, including day to day maintenance and emergency cover. Mr Rostron's method of calculating the electricity charge is reasonable and fair, by reference to an estimated consumption of electricity by the pumps and other elements of the plant machinery based on informal advice received from contracting engineers. The Tribunal heard that overall the annual cost of electricity to the park which is not recovered via meters at the pitches exceeds £15,000. Taking into account the estimated cost of electricity supplied to the water and sewerage plant at approximately £11,000, over £4000 is attributable to the electricity supply to other common parts of the site, and this seems a broadly acceptable figure.

19. So far as the cost of plant is concerned, this is a capital cost and not recoverable as a charge for provision of water supply or sewerage services. Replacement of plant is payable out of pitch fees received; if there is an improvement, the Respondent is entitled to apply for an increase in the pitch fee at the time.

ISSUE 5: THE CALCULATION AND APPORTIONMENT OF WATER AND SEWERAGE CHARGES.

20. It was suggested on behalf of the Applicant that the Respondent, taking advantage of the Settlement Agreement, had added new water and sewerage charges to the existing annual payment, resulting in, in effect, a double charge because the pre-2014 annual payment also consisted of pitch fee plus charges for provision of water and sewerage. The documents produced in evidence were examined at the hearing and it was clear that no double charging had taken place: the Applicant had been fully aware prior to April 2014 of the breakdown of her annual payment between pitch fee and charges, and the same breakdown (as set out at schedule 4 to the Settlement Agreement) was continued into the current year with no untoward increase or duplication.

21. In calculating the apportionment of charges between the residents and the holiday areas of the site, the Respondent assumed that, on average, the holiday units were occupied 70% of the time and had 70% use of the facilities. The Applicant objected and claimed that each unit on the site should be assumed to use the same level of services, since it was theoretically open to the Respondent to obtain 100% occupation of the holiday units. There are on site a bar (open twice a week), laundry, workshop, and office. The Applicant argued that each of these 4 facilities should be regarded as one unit responsible for a full share of the cost of water and sewerage. The Respondent said that none of these utilised more than a fraction of the water and sewerage services consumed by a residential pitch, and that 70% was an accepted industry assumption in relation to holiday units. There are overall 93 residential pitches on site: the number of holiday lets was unknown but less than 27. The Respondent had apportioned the water and sewerage costs on the basis that the holiday units, office, bar, laundry, and workshop together amounted to 21.5 units, total 114.5. Mr and Mrs Rostron had taken advice on the subject and an alternative method of apportionment had been proposed by the local authority: this would however have reduced the deemed number of units to 108.5, and increased the share payable by the Applicant.

22. The Tribunal notes that this is a developing site, with more holiday lets anticipated, and that a consequential increase in the use of common facilities is likely. On the basis of the evidence heard and seen, the Tribunal considers that the Respondent is entitled to assume 70% use of facilities by each holiday let, and that dividing the overall costs by 114.5 is reasonable in the current year. However the apportionment of costs will have to be reviewed annually, and it is to be hoped that in future agreement can be reached on this point between the Respondent and the Residents' Association.

ISSUE 6: RESTITUTION OF OVERPAID SUMS

23. The Applicant has not paid the increase in water and sewerage costs for the current year and there is therefore no restitution to be ordered.

COSTS

24. The Applicant's case was marred by a number of unsustainable arguments in relation to her Written Statement and liability to contribute to water and sewerage costs, as well as entirely unwarranted allegations of dishonesty on the part of the Respondent. However the Tribunal is satisfied that the Respondent only produced documents and full explanations of the charges in response to this application, which was therefore justified. Moreover the Applicant has succeeded in having capital costs removed from her service charges, and the Pitch Fee Review Form has been rectified by this order.

25. In these circumstances, it is right that the Respondent should reimburse the Applicant £155, being the fee paid on lodging her application.