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RESIDENTIAL PROPERTY TRIBUNAL

Case Reference: RPT/0024/06/18,RPT/0021/06/18,RPT/0025/06/18,RPT/0020/06/19, RPT/0023/06/18, RPT/0027/06/18, RPT/0026/06/18

In the Matter of numbers 1,3,4,8,12,17 and 20 Scamford Park, Keeston Lane, Camrose, Haverfordwest, SA62 6HN

In the matter of an Application for permission for leave to appeal to the Upper Tribunal.

Applicant: Mrs Louise Barney- Cooper.

Respondents: Mr and Mrs Loveridge (Number 1)
Mr and Mrs Culpeper (Number 3)
Mr and Mrs Viveash (Number 4)
Mr and Mrs Whittle (Number 8)
Mrs. Taylor (Number 12)
Mr Blandford (Number 17)
Mr and Mrs Tedstill (Number 20)

Tribunal: Legal Chair- Richard Payne
Expert surveyor member- Peter Tompkinson
Lay member- Hywel Jones JP

DECISION

The application for permission to appeal is refused.

Reasons.

1. By letter dated 23rd April 2019, the tribunal sent its written decision to the parties relating to the application to determine a new pitch fee. By letter dated 10th of May 2019 and received by the tribunal on 13 May 2019, Mr Stephen Hassall, lay representative of the respondents (who represented them at the original hearing) seeks permission to appeal to the Upper Tribunal against that original decision. By further letter dated 13 May 2019 and received by the tribunal on 14 May 2019 Mr Hassall sent what he described as an "Addendum to permission to Appeal Scamford Park".

2. Permission to appeal will be granted if it appears to the tribunal that there are reasonable grounds for concluding that the RPT may have been wrong for one of the following reasons as set out in the Lands Chamber of the Upper Tribunal Practice Direction 2010 (paragraph 4.2);

    a. That the decision shows that the RPT wrongly interpreted or wrongly applied the relevant law.

    b. That the decision shows that the RPT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice.

    c. That the RPT took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect or

    d. The point or points at issue is or are of potentially wide implication.

3. Unless the application for permission specifies otherwise, the application will be treated as an application for an appeal by way of review.

<u>Mr and Mrs Loveridge, 1 Scamford Park, case number RPT/0024/06/18.</u>

1. Mr and Mrs Loveridge seek to appeal on the grounds that in their agreement "the sewerage is crossed out, therefore it would indicate that it is included in the Pitch Fee, otherwise it would have been left in as an additional charge, as the water has been. In the application bundle at Exhibit 20 it has been ticked by the Park Owner, thereby showing it is included in the Pitch Fee. The previous Park Owner (Jason Hartley) included this charge in the Pitch Fee as is on their agreement, and Mrs Barney Cooper has admitted this on the application form, so how can it be an extra charge?" The exhibit referred to was form MH – 15, namely the application form to the tribunal in which at page 4 of the form, the applicant has ticked a box to indicate that the pitch fee includes payment for sewerage.

4. At paragraph 10 of our decision of 23rd of April 2019 the tribunal said; "*It must first be noted that under section 62 of the Act, "**pitch fee"** means **"the amount which the occupier of a mobile home is required by an agreement to pay 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;"**.*

5. At paragraph 11 of our decision we drew attention to Chapter 2, of Part 1, Schedule 2 to the Mobile Homes (Wales) Act 2013, ("the Act") which contain the occupier's obligations at paragraph 21 and which are implied by the Act. These include that the occupier must pay the pitch fee to the owner and must pay to the owner all sums due under the agreement in respect of gas, electricity, water and sewerage or other services supplied by the owner.

6. Therefore, it is clear that under section 62 of the Act, the pitch fee does not include sewerage unless the agreement expressly provides that the pitch fee includes such amounts.

7. In Mr and Mrs Loveridge's case, as we explained at paragraph 25 of our decision, under the heading 'Additional Charges' in their agreement, the word 'sewage' was crossed out. Mr and Mrs Loveridge in their appeal say that 'therefore it would indicate that it is included in the pitch fee.' However, the fact that the word sewage is crossed out does not indicate by omission that it must therefore be included in the pitch fee particularly in the light of section 62 which requires express agreement that the pitch fee includes such amounts.

8. The assertion that the previous owner included this charge in the Pitch Fee and the fact that Mrs Barney-Cooper may have ticked the box on the tribunal's application form to say that sewage was included in the pitch fee, do not alter the position that under section 62 the agreement is required to expressly provide that sewage is included in the pitch fee. Mr and Mrs Loveridge's agreement does not expressly provide this. The grounds for appeal therefore do not satisfy any of the criteria set out in paragraph 2 above. It is not considered that there would be reasonable prospects of any appeal succeeding and permission to appeal to the Upper Tribunal is therefore refused for the reasons given.

9. In the addendum letter sent by Mr Hassall dated 13th of May 2018 he makes the point that where the cost of running the sewerage plant of the gas tank rental is attached to the pitch fee that it will attract "a Consumer Price Index (CPI) thereafter". Mr Hassall goes on to make a number of practical points about the cost of renting the gas and sewerage tanks and the cost of electricity. Mr Hassall states that the percentage increase or decrease of CPI "may not cover the actual cost for the electricity or even the emptying of the tank." Mr Hassall further says "in asking for the cost of the sewerage plant and the gas tank rental to be kept as separate items this would be fair to both sides. The residents would know what they are having to pay for those services and the Park owner would be able to invoice the exact cost to each home thereby avoiding further possible disputes over these matters. I would strongly ask that you consider my suggestions if the law allows you to make such a decision."

10. With regard to the contents of this addendum letter, the tribunal accepts without reservation Mr Hassall's very considerable experience within the Park home industry since 1972 and have no doubt that he is motivated to find sensible practical solutions to problems that may arise between park owners and occupiers. However, the tribunal's role is to determine particular disputes brought before us. In the Scamford Park cases as our original decision made clear, there were a number of different agreements with different wording between the occupiers and the site

owner. Therefore, although we have no doubt that Mr Hassall's addendum letter is written in a helpful and positive manner, it does not assist us in the question of the applications for permission to appeal. It does not assert or provide any grounds for considering that the tribunal made a mistake in law, or that any of the other points set out in paragraph 2 above are made out, such as to justify permission to appeal. To be clear therefore, there are no grounds to grant permission to appeal based upon Mr Hassall's helpful letter of 13th of May 2019.

Mr and Mrs Culpeper, 3 Scamford Park, case number RPT/0021/06/18, Mr and Mrs Viveash, 4 Scamford Park, case number RPT/0025/06/18 and Mr and Mrs Tedstill, 20 Scamford Park, case number RPT/0020/06/19.

11. The grounds for appeal are identical to those for Mr and Mrs Loveridge, and for the same reasons as set out above in relation to Mr and Mrs Loveridge, permission to appeal is refused. Paragraph 82 of the tribunal's original decision made it clear that the crossing out of the word 'sewage 'in 'Additional Charges' does not mean that the sewage costs are included in the pitch fee and that they were liable to pay the sewage fees in addition to the pitch fees under the implied terms of their agreements.

Mr and Mrs Whittle, 8 Scamford Park, case number RPT/0023/06/18.

12. The grounds for appeal relied upon by Mr and Mrs Whittle are very similar to the previous appellants in principle although they differ in the wording. Mr and Mrs Whittle contend that "In the agreement the sewerage is crossed out, therefore it would indicate that it is included in the Pitch Fee, otherwise it would have been left in as an additional charge, as the water has been. In the application bundle submitted by the Park owner, marked exhibit C, [this is an extract from the application form to the tribunal] sewerage has been incorrectly marked 'no' when it should be 'yes' as to what is included in the Pitch Fee because Exhibit B of the written agreement shows sewerage crossed out, which indicates it is included in the Pitch Fee as the previous Park Owner (Jason Hartley) did not make an extra charge, strongly suggesting the Agreement with the previous Park Owner must have included the sewerage."

13. It is clear however that the copy of the agreement for Mr and Mrs Whittle that was contained within the tribunal's hearing bundle differs from the copy of the agreement that has been submitted, (described as exhibit A and B,) in this application for permission to appeal. In the hearing bundle, as was made clear by paragraph 28 of our original decision, the word "sewage" was not crossed out nor was it followed by the words "included in site fees", when it appeared under the heading of 'Additional charges'. The tribunal can only make a decision upon the evidence before it and for the reasons given above there are no grounds for considering that the tribunal made a mistake in law or that Mr and Mrs Whittle's

submission otherwise meets any of the other tests for granting permission to appeal. We are attaching at appendix A to this decision a copy of the first 2 pages of Mr and Mrs Whittle's agreement that appeared in our hearing bundle, and the copy of the first 2 pages of the agreement that have been submitted in support of this appeal.

14. Whilst the tribunal at the original hearing can only consider the evidence before it, if the agreement submitted by Mr and Mrs Whittle in support of their application for permission to appeal is in fact correct and it has the word sewage crossed out under additional charges, then this does not mean, for the reasons given earlier in this decision, that the tribunal has made a mistake in law and that there are grounds to appeal. Likewise if the applicant has ticked the incorrect box on an application form, this is simply a mistake by the applicant and does not mean the tribunal has made a mistake in law or that there is an express agreement for sewerage to be included in the pitch fee. It is clearly important that Mr and Mrs Whittle and the applicant ensure that they are both working from the same version of the agreement.

Mrs Taylor, 12, Scamford Park case number RPT/0027/06/18.

15. Mrs Taylor seeks permission to appeal upon the basis that "in the agreement, exhibit EXAA, [it] shows in the box the Pitch Fee is £1600 yearly in advance, sewage an additional £50 per year. Marked in the application form submitted by Mrs Barney Cooper EXBB [this is the application form to the tribunal] sewerage has been ticked as being not included in the Pitch Fee, yet this is contrary to the written agreement."

16. The tribunal dealt with Mrs Taylor's agreement, and indeed Mr Blandford's, at paragraph 81 of the decision of 23rd of April 2019. The tribunal said as follows;

> "For Mr Blandford and Mrs Taylor with their older style agreements, we consider that although there is a box for the pitch fee which says "£1600 yearly in advance sewage an additional £50 a year in advance" (the words 'in advance' are not in Mrs Taylor's agreement), there is also a box on page 5 of the agreements headed "Additional charges" which says "An additional charge will be made for the following matters.....Sewage payable to the park owners". It is curious that, although there are other additional charges in this box, that it is only the sewage charge that also appears in the pitch fee box on page 4 of the agreements, but as a matter of construction we consider that the sewage is not part of the pitch fee. The pitch fee is not expressed to include sewage and it does say on page 4 in the pitch fee box that sewage is 'an additional £50'. Whilst Mr Blandford and Mrs Taylor both say that their sewage costs of £50 a year are included in the pitch fee this is in fact not borne out by the wording on those agreements. The use of the word "additional" clearly indicates that the £50 is in addition to, or on top of another amount, namely the pitch fee."

17. In seeking permission to appeal, Mrs Taylor repeats the contents of the box in her agreement for the pitch fee which the tribunal dealt with. There is nothing in the

grounds of appeal to suggest that the tribunal's construction of the agreements was wrong in law and, as with the previous appellants, the fact that Mrs Barney Cooper the original applicant, has ticked a particular box in the tribunal application form does not alter the legal position and status of her agreement. Mrs Taylor has not demonstrated that any of the criteria necessary for permission to appeal as set out in paragraph 2 above are met, and in our view she does not have reasonable prospects of succeeding on appeal and therefore permission to appeal is refused.

Mr Blandford- 17, Scamford Park, case number RPT/0026/06/18.

18. Mr Blandford seeks permission to appeal firstly upon a similar basis to Mrs Taylor as his agreement also records that the pitch fee is £1600 in advance and sewage an additional £50 per year in advance. Mr Blandford says that the sewage charge is clearly part of the pitch fee and he evidences that he paid £1650 on 5th July 2012 "which clearly shows the sewage charge is included and has been paid." He also says that Mrs Barney Cooper made a mistake in her application form by ticking the box to say that sewerage costs were not included in the pitch fee.

19. Mr Blandford also wrote a letter dated 9 May 2019 in which he draws attention to the tribunal's interpretation of his contract and points out that there are numerous other additional charges on page 5 of his agreement none of which appear in the pitch fee box on page 4. He says that he believes that the sewage is part of the pitch fee and this is confirmed by the fact that the last 9 years it has been paid as such and was subject to the RPI increase in 2014. Mr Blandford states that this has been totally disregarded by the tribunal despite evidence being submitted to the tribunal to verify this in the form of bank statements and receipts. Mr Blandford also says that "the gas is an additional item on page 5 [of his agreement] but one which is not part of the pitch fee on page 4 which begs the question as to why the gas tank rental has been added to the pitch fee and will therefore be subject to future CPI increases."

20. Mr Blandford also pointed out that in paragraph 81 the tribunal had erroneously referred to a Mrs Blandford (there is no Mrs Blandford) and that his agreement is not the newest but the oldest. The tribunal is grateful to Mr Blandford for pointing out these errors which will be amended in accordance with the slip rule and an amended decision sent out. (The amended paragraph 81 appears at paragraph 16 above). The tribunal apologises to Mr Blandford and to all parties for these errors.

21. However with regard to the law, the tribunal refers to its construction of Mr Blandford's agreement under paragraph 81 of the original decision. It is accepted and was within the evidence provided to the tribunal, that Mr Blandford was charged an annual total of £1650. Mr Blandford's agreement described the pitch fee as £1600 yearly in advance and in the same box stated "sewage an additional £50 per year in advance". All documentation in relation to this matter, for example in the trial bundle was an invoice to Mr Blandford from previous owners Mr and Mrs White dated 21 June 2011 which said annual ground rent was £1600 and on a new line "Annual sewage charge @£50", reflected both the pitch fee and the additional

charge. In the letter to Mr Blandford dated 2nd of July 2012 which was in the original trial bundle, Park owner Mr Hartley charged Mr Blandford again what was described as ground rent for the year £1600, and then on a new line in the demand it said "Plus £50 sewage". The fact that the sewage was demanded annually in advance at the same time as the ground rent or pitch fee does not mean that the sewage is part of the pitch fee. The sewage payment in Mr Blandford's case has continually been expressed to be an additional payment to the pitch fee even if demanded at the same time. The agreement has not expressly said that the pitch fee **includes** the amount for sewerage as required under the definition of pitch fee in section 62 of the Act, but rather expresses the amount for sewage to be **additional to** the pitch fee. The tribunal therefore do not consider that there are grounds for demonstrating that the tribunal misapplied or misinterpreted the relevant law or any of the other factors that would be required for the grant of permission to appeal which is therefore refused on this ground.

22. With regard to the tribunal's finding that the gas tank costs are a communal service and the rental is accordingly recoverable as an additional cost under the pitch fee, (paragraph 84 of the tribunal's original decision), Mr Blandford questions this in his letter of 9 May 2019 but does not advance any reasons why the tribunal have made a mistake in law nor advance any other reasons why permission to appeal should be granted. Accordingly permission to appeal is refused on this ground.

DATED this 29th day of May 2019

Richard Payne LLB M Phil
CHAIRMAN