FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/00GA/PHC/2015/0010
Property	:	Linton Park, Worcester Road, Bromyard, Herefordshire, HR7 4DB
Applicant	:	Country Parks Limited ("CPL")
Representative	:	Mrs F.Surridge, Managing Director, Country Parks Limited
Respondent	:	Mrs P.G. Taylor-Hayward
Representative	:	None
Type of Application	:	An Application under section 4 Mobile Homes Act 1983 to determine whether sums in respect of works to river bank and lighting are recoverable from the Respondent
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS Judge D. Jackson
Date and Venue of Hearing	:	5th February 2016 at Hereford Justice Centre, Bath Street, Hereford, HR1 2HE
Date of Decision	:	15th February 2016

DECISION

Introduction

1 This is an application under section 4 Mobile Homes Act 1983 by the owners of a residential park, Country Parks Limited, ('CPL') to the First-tier Tribunal ('FTT'):
   i to determine whether sums in respect of improvements to a river bank and street lighting are recoverable from the Respondent and
   ii to require the Respondent to pay the sums demanded and any arrears.

The Law

2 The Mobile Homes Act 1983 provides at section 4:
(1) In relation to a protected site in England [or in Wales], a tribunal has jurisdiction -
(a) to determine any question arising under this Act or any agreement to which it applies; and
(b) to entertain any proceedings brought under this Act or any such agreement, subject to subsections (2) to (6).

3 The Respondent acquired her mobile home by Assignment dated 10th December 2002 made between Mr and Mrs D Bradley (1) the Applicant (2) and the Respondent (3). The Assignment was subject to the terms of a Written Statement dated 18th April 1997. Accordingly the express terms of the agreement between the parties to these proceedings are to be found in that Written Statement. Although no copy was produced by either party in their respective bundles the Tribunal was provided with a copy at the hearing.

4 The Tribunal has also considered the implied terms set out in Part 1, Chapter 2 of Schedule 1 to Mobile Homes Act 1983 and in particular paragraphs 16,17,18,21 and 22.

Inspection

5 The Tribunal inspected the site before the Hearing on 5th February 2015.

6 Linton Park is a Park Homes site on the eastern side of Bromyard, a small town in Herefordshire 16 miles west of Worcester and 8 miles north east of Hereford. The Park is accessed from the A44 leading into the town at the foot of a long hill which is part of Bromyard Downs. The main part of the site is fairly level and adjoins the River Frome which flows through a channel to the eastern side of the site. The site boundary is the middle of the stream.

7 There is a private tarmac road through the site lit by a series of street lamps. Part of the road is close to the river and in 2006 the site owner's contractors reinforced the river bank by building it up with stone boulders to reduce the risk of flood damage. They also fitted isolators to the street lamps.

8 There are 68 Park Homes on the site, one of which is owned by the Respondent, Mrs Taylor-Hayward.

The Parties' Submissions

Applicants' Submission

9 The Tribunal has considered Statement of Case and bundle of documents dated 1st December 2016.

10. Mrs Surridge for CPL told the Tribunal that in 2005 the River Frome had flooded causing damage to the road through the Park and CPL had obtained contractor's estimates to reinforce the river bank with stones and fit isolators to the street lamps around the park to prevent damage from any flooding in the future. The cost was expected to be about £50,000 and CPL wrote to the residents on 23rd June 2005 (A1), explaining the proposed works and saying that the company intended to ask the residents to make a contribution to the costs as it was considered to be partly for their benefit.

11 The proposal was that the residents should pay an annual interest charge based on 50% of the cost of the work, i.e. the river bank and street lighting works, which was expected to be about £3.00 - £4.00 per month per resident. The letter included a tear-off strip that the residents were invited to sign by way of agreement and return to CPL. Most of the residents agreed and returned the signed tear-off strips.

12 CPL then duly undertook the work and on 6th March 2006 (A4), wrote to all the residents again advising that the pitch fee would be increased by way of inflation (which was not contested) and adding a sum of £75.37 p.a. (£6.28 per month). According to CPL, the total cost of the work had risen to £64,069.48 comprising £59,043.75 for the river bank (A2) and £5,025.73 for 50% of the costs of work to the street lighting (A3). The new charge represented an interest charge of 8% on 50% of the cost of the street lighting but in contrast to their letter of 23rd June 2005, now included interest at 8% on 100% of the cost of works to the river bank (not 50% as previously offered).

13 The works were described as "capital expenditure and can in no way be related to maintenance". The charge would be levied at the same time as the pitch fee but unlike the pitch fee it would be a fixed annual charge, not increased in line with inflation in future years. It was made clear that the charge was purely for interest and did not include any element of capital repayment.

14 Most of the residents paid the new charges but around 6 objected at the time. One of the objectors was Mrs Taylor Hayward. At the hearing Mrs Surridge produced a file note recording that Mrs Taylor-Hayward had visited the site office on 27th April 2006. It is the Applicant's case that the Respondent verbally agreed, at that time, to pay the disputed sums. At the time of that conversation the Respondent did not have a copy of her Written Statement. She had telephoned to ask for a copy on 20th April but was subsequently told that there would be a £10 charge (a copy was finally supplied without charge on 3rd May 2006). The file note advised 'Mrs Taylor said that she didn't want to be the only person who disputed the rent review therefore she would pay the revised amount in May'. The Tribunal notes that not only did the Respondent not have a copy of her Written Statement at the time of her purported agreement but also that she appeared "very stressed" and had been "wound up by certain other residents".

15 Thereafter Mrs Taylor-Hayward and all the other residents had then paid the disputed sums without demur every year from 2006 until April 2015 when Mrs Taylor-Hayward withheld payment for the first time.

16 The Applicant's case is that there has been agreement by the Respondent to pay the disputed sums as evidenced by (1) the file note which it was claimed was a record of verbal agreement on 27th April 2006 and (2) the fact that the Respondent had paid for all the intervening years 2006-2014. As far as the Applicant is were concerned they had consulted with all residents, all residents had agreed and were therefore now liable for the charges relating to river banking and electrical work.

17 On 2nd July 2015 the Applicant commenced County Court proceedings for recovery of what was described as ground rent from 1st April 2015 (A37). On 9th October 2015 the County Court transferred these matters to the Tribunal (A51).

Respondents' Submission

18 The Tribunal has considered Respondent's Statement of Case and documents received on 16th December 2015.

19 Mrs Taylor-Hayward's case was that she had objected to paying for river banking and electric work from the very outset as evidenced by her letter dated 3rd April 2006 to the Applicant (R12). Paragraph 3 states 'I am not in agreement with your reasons for charging us this work as I still feel it is down to delayed maintenance, but your letter points out otherwise.'

20 At the Hearing the Respondent confirmed that she had only paid the disputed charges because she did not want to be the only non-paying resident.

21 Her objections were re-affirmed in a letter dated 13th February 2015 to the Applicant (R25) which said:

'On behalf of several Residents, I have been asked to get information with regard to the payments that are made to you, monthly, along with the Rent, and which has been paid commencing April 1st 2006 (9 yrs) for River Banking and Lighting, an amount which nothing was signed for by the Residents, because we have always considered it to be 'maintenance' covered by Park Home Owner and not Residents.'

Findings

22 We carefully considered all the evidence before reaching our Decision and are grateful to the parties for their submissions and attending the Hearing.

23 The catalyst for the disputed works was an accident in July 2005 when a woman was trapped in her car having "plunged 20 feet down a bank into the River Frome" (R1). As a result various statutory bodies became involved resulting in CPL agreeing to improve safety on the site by carrying out river banking and electrical work. As conceded by CPL (A4) this was capital expenditure and not repair or maintenance. There is no express provision for capital works in the Written Statement. However the Owner's (CPL's) undertakings include "maintenance of those parts of the park which are not the responsibility of the occupier" (4(a)) and to maintain services and facilities (4(c)). Having inspected the Property we find that the river bank and street lighting are both on those parts of Linton Park which are outside the land on which any of the residents are entitled to station their mobile homes. The river bank and street lighting are on that part of Linton Park which is the sole responsibility of CPL. We find that none of the residents were, absent agreement, liable for any of the capital expenditure.

24 There has been inconclusive consultation here. A meeting was arranged for all residents at a public hall in Bromyard (A6 and A8). No minutes were kept of that meeting. The Respondent did not attend. That general meeting was preceded by a meeting between two representatives of CPL and two residents at CPL offices at Linton Park (minuted at A 7). The outcome of consultation was inconclusive (A8). Ultimately CPL accepted that there was no unanimity in relation to the proposed works (A10). It was at this point that CPL decided to unilaterally charge all residents. They threatened Small Claims Court proceedings and to seek to recover legal costs (A10). For the reasons that follow we find that it was at this point that CPL went wrong. Neither the express nor implied terms of their agreement with the Respondent entitled them to seek recovery from the Respondent for the disputed works. Consultation had failed and crucially the agreement of the Respondent had not been obtained.

25 The Written Statement of 18th April 1997 sets out the express terms of the agreement between the parties. The Written Statement provides for the occupier to pay the pitch fee and to pay

outgoings (paragraphs 3a and b) and indemnify the owner in relation to third party claims (3l). The occupier also agrees to observe the Park Rules (3j), a copy of which was produced at the hearing.

26 We find that none of those express terms impose any obligation on the Respondent to pay for capital expenditure on river banking or electrical work. Accordingly we find that the disputed sums are not recoverable under the Written Statement or Park Rules.

27 Having failed to establish recovery under the express terms Mrs Surridge argued that the disputed amounts were recoverable as part of a new pitch fee agreed in 2006 under implied term 16 set out in Part 1, Chapter 2 of Schedule 1 to the 1983 Act.

28 Our finding is that there has not been "agreement of the occupier" for the purpose of implied term 16(a). The Respondent has been clear from the outset in her written communications. Her letter of 3rd April 2006 makes it clear "I am not in agreement" (R12). Mrs Surridge confirmed that the Respondent did not return the tear-off slip attached to the letter of 26th June 2005 (A1). In response to a letter dated 3rd April from the Respondent CPL wrote to her on 4th April 2006 (copy produced at the hearing) "if you are in agreement with the revised review we request that you complete the tear-off slip attached". Mrs Surridge confirmed that the Respondent did not do so.

29 We do not find that the conversation recorded in the note of 27th April 2006 (copy produced at hearing) amounts to an agreement for the purposes of implied term 16(a). The Respondent was "stressed" and "wound up". She had been refused a copy of her Written Statement until she paid £10. She was under considerable pressure from the other residents. There was some conflict between the oral evidence of the Respondent and the contemporaneous note. However we found the Respondent to be an honest witness who has consistently refused to pay for river banking and electrical work for which she has no liability under the express terms of her agreement with the Applicant. We find that although the Respondent has made payment over many years, at no time has she ever agreed to a change in pitch fee based on a contribution to river banking or electrical works of a capital nature carried out by the Applicant.

30 In the absence of agreement the only way for the Respondent to recover the disputed amounts was to apply to the appropriate judicial body in 2006 for an order determining the amount of the new pitch fee under implied term 17.Mrs Surridge confirmed that no such application had been made. Accordingly we find that the disputed amounts are not recoverable under the implied terms as part of a proposed new pitch fee.

31 We have considered **PR Hardman & Partners v Brenda Greenwood and Marilyn Fox** [2015] UKUT 0587 (LC); LRX/43/2015 and in particular paragraph 61. Although not referred to by Mrs Surridge this in effect sums up the final plank of her argument that, even if neither express nor implied terms assist, the Respondent having paid the disputed sums from 2006 to 2015 is "estopped from disputing historic practice". We find that no estoppel arises here. The Respondent clearly did not agree in 2006 and has never changed her position. If the Applicant wished to rely on recovery through a proposed new pitch fee, the legislative obligation was squarely on the Applicant to make the appropriate application. The Applicant has not acted to its detriment in reliance of the conduct of the Respondent. The costs of the disputed works were incurred by CPL before any agreement was obtained from the Respondent. There is no prejudice to the Applicant by the conduct of the Respondent and no estoppel arises.

32 There are no provisions in the Limitation Act 1980 that specifically cover applications to the FTT. No statutory limitation period is applicable to a claim by an occupier of a mobile home to recover pitch fees that have already been paid. This is not a claim in contract nor is it a

claim on a specialty; rather the Respondent seeks recovery under statutory provisions to which no limitation period applies.

Decision

33

1. Charges for works to the river banking and fitting isolators to street lighting carried out by CPL in 2005/6 are not payable by the Respondent to CPL.
2. Pursuant to s230(5A)(b) Housing Act 2004 we direct overpayment of pitch fee consequent to paragraph 1 above to be repaid in full by CPL to the Respondent no later than 31st March 2016.
3. In the event that the amount to be repaid is disputed, either party may refer quantification of the overpayments back to the FTT for further determination. Any referral to the FTT must be made no later than 28th April 2016.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date: 15th February 2016

Appeal to the Upper Tribunal

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber).
Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.