Neutral Citation Number: [2017] EWCA Civ 52

Case No: C3/2016/0126

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
DEPUTY PRESIDENT MARTIN RODGER QC
LRX/43/2015

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2017

Before:

SIR TERENCE ETHERTON, MR
LORD JUSTICE DAVIS
and
LORD JUSTICE UNDERHILL

- -

Between:

P R HARDMAN & PARTNERS	**Appellants**
- and -	
GREENWOOD & ANR	**Respondents**

- -
- -

Mr Conrad Rumney (instructed by **Tinn Criddle Hall Solicitors**) for the **Appellant**
Ms Marilyn Fox (Litigant in Person)

Hearing date: 24th January 2017

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Approved Judgment

Sir Terence Etherton MR:

1. This appeal concerns whether, and if so to what extent, occupiers of pitches on a caravan park are liable, pursuant to agreements to which the Mobile Homes Act 1983 ("the MHA") applies, to pay the owners of the park for the owners' costs, expense and trouble in providing, administering and maintaining utilities.

2. As was observed by Lord Wilson in *Telchadder v Wickland Holdings Limited* [2014] UKSC 57, [2014] 1 WLR 4004, at [13] about 85,000 households live in mobile homes on about 2000 sites governed by the MHA.

3. The appellants ("Hardman") are the owners of the Shortferry Caravan Park, Ferry Road, Fiskerton, Lincolnshire ("the Park"), which is a protected site for the purposes of the MHA. The respondents (who are the applicants in these proceedings) ("the applicants") are each occupiers of a pitch on the Park, which they occupy as a permanent residence.

4. The First-tier Tribunal Property Chamber (Residential Property) (A.M. Davies LL.B and P.E.Mountain FRICS) ("the FTT") held in a decision dated 9 February 2015 that, other than through their pitch fees, the applicants' obligation to pay for electricity, liquid petroleum gas ("LPG") and sewerage services at the Park is limited to their respective appropriate proportions of (1) the standing charge and the price of electricity delivered to the applicants' pitches at the rate paid by Hardman to their supplier; (2) the price of electricity supply to the swimming pool and the street lights at the Park; (3) the price paid by Hardman to their LPG supplier for LPG delivered to the applicants' pitches; and (4) VAT.

5. Importantly, for the purposes of this appeal, the effect of the FTT's decision was (1) to exclude the addition of any service element to the cost of LPG delivered to the pitches, and to restrict Hardman to recovering the price which they paid to their LPG supplier; (2) to exclude the costs incurred by Hardman relating to the Park's private sewerage system, including the costs of engaging third party contractors to empty and service the system; and (3) to exclude any charge for administration by Hardman of the supply of utilities.

6. On appeal and cross-appeal to the Upper Tribunal (Martin Rodger QC, Deputy President) ("the UT"), the UT in part upheld and in part overturned the decision of the FTT. For the purposes of this appeal, what is important is that the UT rejected Hardman's case that the applicants were liable to pay a general service charge and held that the standard form agreement with each of the applicants was concerned solely with the reimbursement of specific outgoings incurred by the owner in meeting liabilities to third party service providers.

7. That is the issue at the heart of this appeal.

The factual background

8. I gratefully take the following description of the facts largely from the summary in the UT, which itself was based on the decision of the FTT.

9. The Park contains two sites which are protected sites for the purpose of the MHA. The Park has mixed use and is licensed for 100 touring caravans or tents, 337 holiday homes and an additional 67 mobile homes used as permanent residences. The permanent residences are all on the protected sites. The facilities of the Park include a series of fishing lakes, a swimming pool, a laundry, a shower block and several public toilets. The common areas and roads running through the Park are provided with street lights, and the Park has its own private sewerage system.

10. The applicants, Mrs Brenda Greenwood and Mrs Marilyn Fox, are the occupiers of two of the permanent pitches on the Park, on which they station their mobile homes.

11. Each pitch is provided with a supply of LPG piped from a bulk tank. The tank is filled by an independent supplier whose charges are met by Hardman. Those charges include the cost of renting the LPG tank itself. The supply to the permanent pitches is individually metered. Hardman pass on the cost of the LPG consumed to the occupiers of those pitches by quarterly billing. The unit rate which Hardman charge to the occupiers for the gas supplied to them has been set by Hardman at a level intended to include a contribution towards the cost of providing gas to the communal areas, and to the costs incurred by Hardman in reading meters, tank rental, maintenance of the tank compound and underground pipes, an interest charge (as Hardman must pay for the LPG when it is supplied but are reimbursed quarterly), and a further administration fee.

12. As a proportion of the cost of the gas those surcharges are significant. Since May 2008 the cost to Hardman of LPG delivered to the Park has varied between 34p per litre and 47p per litre. The charge to pitch occupiers has varied during the same period between 49p per litre and 71p per litre. The information about the charges given to occupiers comprises only the cost of supply, the charge to occupiers and a list of the matters covered by the margin between those figures (which the appellants refer to as the "service charge element").

13. Electricity is supplied to the Park through a single mains supply which is then sub-divided to serve both the pitches and the communal facilities, including the laundry room and swimming pool, and to operate the sewerage system and street lighting. The permanent pitches each have a separate meter. The meters do not distinguish between day and night supplies of electricity although the tariff negotiated by Hardman with their supplier charges these at different rates.

14. The cost of electricity purchased by Hardman varied between 2008 and February 2013 from 9p per unit to 11p per unit. From May 2013 a differential day and night rate was negotiated which varied from 9.3p to 15p per unit at the day rate and from 5.9p to 9.3p per unit for the night rate. Hardman charged the pitch occupiers for electricity at rates varying between 12p per unit and 28p per unit between 2008 and 2014. Hardman regarded the difference between the price they paid and the rate they charged as a "service charge element" intended to recoup the cost of electricity supplied to the communal areas, reading meters, standing charges and meter fees as well as an administration fee, the cost of calling out electricians to resolve any problems and the cost of maintaining a computer programme to assist with billing. The elements making up the charges were not identified in the invoices delivered to the occupiers.

15. With effect from 1 January 2003 the maximum price at which electricity may be resold has been set by the energy regulator, Ofgem, and is the same price as that paid by the person re-selling it, including any standing charges. Hardman acknowledged to the FTT that the prices which they had charged to the applicants exceeded what was permissible.

16. The sewerage system serving the Park is a private system. There are now three sewage treatment plants with six tanks. One of the tanks serves 39 of the permanent pitches. The other permanent pitches are served by tanks which also serve the holiday pitches. The costs incurred by Hardman in connection with sewerage include the cost of a permit from the Environment Agency, charges levied by a contractor for emptying the tanks, charges by a second contractor for servicing the tanks every quarter and the cost of electricity required to operate the system. Hardman set their own quarterly sewerage charges to the occupiers with a view to recouping a contribution towards those expenses. In addition, it is a condition of the Environment Agency permit that each tank is monitored twice daily, a task which is undertaken by Hardman's own employees. The monitoring requires about two hours per day of employees' time but that cost is not passed on to the occupiers.

The MHA

17. Section 1(1) of the MHA provides that the MHA applies to any agreement under which a person (defined as "the occupier") is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as his only or main residence. By virtue of section 5(1) the expression "protected site" has the same meaning as in Part 1 of the Caravan Sites Act 1968.

18. Section 1(2) requires the owner of the protected site (defined as "the owner") to give to the proposed occupier a written statement containing various matters, including terms implied by section 2(1).

19. Section 2(1) provides that the implied terms are the applicable terms set out in Part 1 of Schedule 1 to the MHA. If the applicable judicial body so orders pursuant to section 2(2), there shall be implied terms concerning the matters mentioned in Part II of Schedule 1.

20. Section 2A provides that the Secretary of State may, by statutory instrument, make amendments to Parts 1 and 2 of Schedule 1. They have been amended by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Orders of 2006 and 2011.

21. Section 3(1) provides that an agreement to which the MHA applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor.

22. By virtue of section 4(1) and section 5(1) the First-tier Tribunal has jurisdiction in relation to the matters in issue in these proceedings.

23. It is only necessary to refer to the following terms implied in Part 1 of Schedule 1 (in the case of protected sites in England).

24. Implied terms concerning the pitch fee are set out in paragraphs 16 to 20 of chapter 2 of Part 1 of Schedule 1 ("chapter 2"). The expression "pitch fee" is defined as follows in paragraph 29 of chapter 2:

> "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".

25. Paragraph 17 of chapter 2 provides that the pitch fee shall be reviewed annually at the review date. The expression "the review date" is defined in paragraph 29 of chapter 2 to mean the date specified in the written agreement as the date on which the pitch fee will be reviewed in each year or, if no such date is specified, each anniversary of the date the agreement commenced.

26. By virtue of paragraph 16 of chapter 2 the pitch fee can only be changed on review if either the occupier agrees or the appropriate judicial body (namely the First-tier Tribunal), on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

27. The following paragraphs of chapter 2 are relevant to the determination of a new pitch fee:

> "18
>
> (1) When determining the amount of the new pitch fee particular regard shall be had to—
>
> (a) any sums expended by the owner since the last review date on improvements—
>
> (i) which are for the benefit of the occupiers of mobile homes on the protected site;
>
> (ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and
>
> (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;
>
> (aa) … any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not

previously been had to that deterioration or decrease for the purposes of this sub-paragraph);

(ab) … any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph);

(ba) … any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date; and

(1A) But … no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

…."

"20

(A1) … Unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to—

(a) the latest index, and

(b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), "the latest index"—

(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;

(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2)."

28. Paragraph 21 of chapter 2 specifies certain obligations of the occupier. Sub-paragraphs 21(a) and (b) are relevant to this appeal and are as follows:

"21 The occupier shall—

> (a) pay the pitch fee to the owner;
>
> (b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner; …"

The agreements

29. The agreements used by Hardman at the Park are in a common form recommended by British Holidays & Home Parks Association, whose logo appears on the document.

30. Mrs Greenwood and Mrs Fox are assignees of their respective pitches. The agreements relating to their pitches ("the agreements"), which were made between their predecessors and Hardman, are the same in all material respects, and, as is common ground, are binding on them. Mrs Fox's agreement was made on 12 December 2001. Mrs Greenwood's agreement was made on 5 October 2003.

31. The agreements are in four parts. Part I identifies the parties, the date of commencement and the pitch. Part II provides information explaining the operation of the 1983 Act. Part III is titled "Implied Terms" and lists the terms which, at the date the written statement was drafted, were implied by the MHA. Part IV is titled "Express Terms of the Agreement".

32. Paragraph 1 of Part IV confers the right on the occupier to station a mobile home on the pitch and "the right to use such communal and recreational facilities as may be provided upon the park".

33. In paragraph 3 of Part IV the occupier gives various undertakings to Hardman, including the following:

> "(a) To pay to the owner an annual pitch fee of [left blank] subject to review on 1 February annually …
>
> (b) To pay and discharge all general and/or water rates which may from time to time be assessed charged or payable in respect of the mobile home or the pitch (and/or a proportionate part thereof where the same are assessed in respect of the residential part of the park) and charges in respect of electricity gas water telephone and other services
>
> …
>
> (m) To permit the owner, his servants and agents with or without workmen at all reasonable hours to enter upon the pitch for the purpose of:
>
> …
>
> (i) inspecting and maintaining the services provided at the park …"

34. In paragraph 4 of Part IV Hardman give various undertakings to the occupier, including the following:

> "(a) To keep and maintain those parts of the park which are not the responsibility of the occupier hereunder or of other occupiers of other pitches on the park in a good state of repair and condition.
>
> …
>
> (c) At all times during the currency of the agreement to use his best endeavours to provide and maintain the facilities and services available to the pitch at the date hereof or such further services as may from time to time be provided to keep the same in proper working order …
>
> (d) To insure and keep insured the park against third party liability, …"

35. Provisions for the review of the pitch fee are contained in paragraph 7 of Part IV. They state that on the review date, namely 1 February in each year, the amount of the annual pitch fee shall be reviewed

> "and in determining the amount of the reviewed pitch fee regard shall be had to: (i) the Index of Retail Prices (ii) sums expended by the owner for the benefit of the occupiers of mobile homes on the park (iii) any other relevant factors including the effect of legislation applicable to the operation of the park".

The decisions of the FTT and the UT

36. I have already briefly summarised the decisions of the FTT and the UT. They are clear and careful, and that of the UT contains a particularly detailed analysis. It is not necessary, however, to describe them further, other than to say that tribunal judge Martin Roger QC has considerable experience of this area of law and practice and that his decision, when sitting in the Upper Tribunal, in *Britaniacrest Limited* [2013] UKUT 0521 (LC) was followed.

37. In that case Britaniacrest Limited was the owner of a mobile home park in Lancashire, and the issue was whether it was entitled to impose a charge to cover the cost of reading gas, electricity and water meters and carrying out other administrative tasks in connection with the supply of utilities to the pitches. Paragraph 3(b) of Part IV of the written statement in that case was in identical terms to the corresponding paragraph of the agreements in the present case. The UT held that the cost of administering the utilities was not recoverable as a separate charge but was included in the pitch fee.

The appeal: discussion

38. Mr Conrad Rumney, for Hardman, submitted that paragraph 3(b), on its natural and ordinary meaning, entitles Hardman to charge a service charge in respect of the cost of supplying, maintaining and administering the supply of utilities to the pitch. His

submission concentrated on the words "charges in respect of electricity, gas, water telephone and other services" in paragraph 3(b). Hardman's case is that there is no reason to limit "charges" there to liabilities to third party providers, although it would also embrace such liabilities. He emphasised the width of the words "in respect of" and that there is no express exception for services provided by the owner.

39. Mr Rumney described how LPG is bought by Hardman in bulk and re-sold by them to the pitch occupiers, and how electricity is similarly purchased by Harman and re-sold to pitch occupiers.

40. He submitted that the words of paragraph 3(b), and Hardman's interpretation of them, are consistent with those supply arrangements and also with the provisions of paragraph 4(c), which oblige Hardman "to use [their] best endeavours to provide and maintain the facilities and services available to the pitch at the date hereof or such further services as may from time to time be provided to keep the same in proper working order".

41. Mr Rumney submitted that such service charges recoverable under paragraph 3(b) are, by necessary implication, limited to reasonable amounts for costs reasonably incurred. In that connection, he referred to *Britaniacrest Ltd v Bamborough* [2016] UKUT 144, in which it was held (obiter) by the UT (Mr Rodger QC) that an express provision in an agreement, to which the MHA applied, for an additional charge for administration of gas, electricity, water and sewage was limited to a reasonable charge on normal principles of the interpretation of contracts.

42. Despite Mr Rumney's able submissions, I would dismiss this appeal. My reasons can be stated quite briefly.

43. The appeal turns on the proper meaning and effect of paragraph 3(b) of Part IV of the agreements. I consider it is clear that that the "charges" mentioned in the second part of that paragraph are charges by third party utility suppliers and the "other services" mentioned are those provided by third parties in respect of third party utility supplies to the pitch. Payment for other third party contractors and for services undertaken by Hardman themselves is not recoverable under paragraph 3(b) but can be recovered only as part of the site fee.

44. There is a marginal note – "To pay outgoings" – by the side of paragraph 3(b) of Part IV but this cannot be taken into account on the interpretation of paragraph 3(b) because paragraph 9 of Part IV provides that marginal notes are inserted for convenience of reference only and shall not affect the construction, meaning or effect of anything in Part IV or govern the rights and liabilities of the parties.

45. The first part of paragraph 3(b) is directed to general and water rates (now council tax and water charges payable to a private water company), which are the archetype of liabilities due to third parties. The utilities mentioned in the second part of paragraph 3(b) are also typically provided by third party utility suppliers. Mr Rumney accepted that the "other services" mentioned would not include all other services but would be limited to services in respect of the provision of utilities.

46. Not only is there no clear indication in paragraph 3(b) that the paragraph moves from liabilities incurred only to third parties to liabilities incurred to third parties or to

Hardman but the language used is markedly unsuited to such a meaning. The one word "charges" would then have been used to cover two quite distinct sources of liability. One of those is for a specific amount, uncontrovertibly incurred, and simply verified by reference to a third party charge. The other is in substance a service charge to remunerate the Park owner for work done and services performed by or on behalf of the owner. The natural and normal way to provide for such a service charge payable by an occupier would be by a separate and self-contained promise or covenant by the occupier to pay specified costs and expenses incurred by, and to remunerate other specified work carried out by, the owner.

47. Moreover, there are absent all the usual provisions for control of excessive service charges which are found in leases, whether expressly stated or regulated by statute in the case of residential properties (originally by the Housing Finance Act 1972 and now the Landlord and Tenant Act 1985 as amended and extended). There is not even an express provision limiting what is recoverable by way of service charge to a reasonable amount in respect of costs reasonably incurred. That restriction is dependent on what Hardman concedes is an implied term.

48. The only way a pitch owner could challenge the amount of such a service charge would be by application to the First-tier Tribunal under section 4 of the MHA, where the burden would be on the occupier to satisfy the tribunal of the unreasonableness of the charge. At least one obvious purpose of the MHA was to protect the occupiers of mobile homes and to provide certainty as to the rights of both occupiers and owners. It is highly improbable that a written statement in standard form made pursuant to the MHA would include provision for recovery of costs and expense incurred by the owners themselves, or for remunerating other work carried out by the owners, without any express provision specifying limitations on what is recoverable by the owners and how the amounts charged by the owners could be challenged. It is notable that, by contrast, the MHA specifies that the annually revised pitch fee has to be agreed with the occupiers or determined by the First-tier Tribunal.

49. Such costs and expenses incurred by Hardman, and remuneration for work carried out, are potentially recoverable as part of the site fee. Under the terms of the agreements the site fee is reviewable annually. Paragraph 20 of chapter 2 of Part 1 of Schedule 1 to the MHA provides that the presumption is that the pitch fee shall increase or decrease in proportion to the movement in the RPI. The increase in the pitch fee can be greater, however, if the presumption would produce an unreasonable amount. Paragraph 18 of chapter 2 specifies certain matters to which there must be paid particular regard in determining the amount of the new pitch fee but it does not provide that those are the only matters which can be taken into account on the review. Paragraph 18(1A) and Paragraph 19 preclude regard being paid to certain matters on the review but none of those are relevant to Hardman's costs and expenses and the other sums in issue in these proceedings.

50. Mr Rumney accepted that, pursuant to the provisions of paragraph 7(a)(ii) of Part IV of the agreements, Hardman can recover, through the annually reviewed site fee but only through the site fee, the costs and expense incurred by Hardman in complying with its obligations under paragraph 4(a) (maintenance and repair of communal areas of the Park, such as the lakes, the swimming pool, the laundry, the shower block and the public toilets), paragraph 4(c) (the provision and maintenance of facilities and services, to the extent that there is no right of recovery under paragraph 3(b), as Mr

Rumney conceded would be the case in respect of the communal areas) and paragraph 4(d) (insurance) of Part IV of the agreements. The definition of "pitch fee" in paragraph 29 of chapter 2 of Part 1 of Schedule 1 to the MHA states expressly that the pitch fee embraces maintenance of the common areas of the protected site.

51. There is nothing in the agreements or the MHA which precludes Hardman from claiming such costs on account, that is to say in anticipation of them being incurred, as well as after they have been incurred. By virtue of paragraph 16 and paragraph 17(4) of chapter 2 of Part 1 of Schedule 1 to the MHA, whether and to what extent and in what way they are recovered as part of the site fee on review depends on what is agreed with the occupiers or, in the absence of any such agreement, is determined by the First-tier Tribunal to be reasonable. There is, therefore, nothing inherently improbable about costs and expense incurred by Hardman in respect of work done and services provided by them in connection with utilities to the pitches being recoverable as part of the site fee rather than under paragraph 3(b) of Part IV of the agreements.

52. For the same reasons there is no scope for an implied term that Hardman can recover the costs, expenses and other sums in issue in these proceedings pursuant to paragraph 3(b). Such a term is neither so obvious it did not need to be expressed nor is it necessary to give the agreements commercial or practical coherence: *Marks and Spencer plc v BNP Paribas Securities Service Trust plc* [2015] UKSC 72, [2016] AC 742.

53. Mr Rumney advanced various arguments about complications in arriving at a reasonable pitch fee in the event of significant expenditure in any one year being included in the pitch fee and the operation of the presumption of applying RPI changes in one or more subsequent years. Any such complications will apply, however, on his own concession, to costs and expenses incurred by Hardman in respect of communal areas in any event. At the end of the day, the amount of the pitch fee rests solely on what the occupiers agree or the First-tier Tribunal determines to be reasonable on the annual review.

54. As Mr Rumney accepted, neither paragraph 21(b) nor the definition of "pitch fee" in paragraph 29 of chapter 2 of Part 1 of Schedule 1 to the MHA takes the matter further since they merely direct attention to what is due under the agreements in respect of gas, electricity, water, sewerage or other services. If, as I would hold, the costs, expenses and other sums in issue are not due under paragraph 3(b) of Part IV of the agreements, then there is nothing in principle to preclude them being included in the pitch fee.

55. Exceptionally, we permitted oral submissions on behalf of the applicants from Mr Alan Savory, who has no legal qualifications. We allowed him to address us in view of his experience and knowledge as a consultant to the Independent Park Home Advisory Service, the fact that he was permitted to speak on behalf of the applicants before the FTT and the UT, and in the light of there being no objection from Mr Rumney.

56. Mr Savory placed reliance on the 2011 SI. I cannot see, however, that it contained anything which has a material bearing on the appeal. He also submitted that the review of the pitch fee can only take account of costs already incurred by the owner

and not any which are prospectively to be incurred. As I have said, there is nothing in the MHA which so provides. What costs and expense are included, whether prospective or already incurred, depends on what the occupiers agree or are determined by the First-tier Tribunal to be appropriate to be taken into account in order to make the pitch fee a reasonable fee.

57. It follows that the second part of paragraph 3(b) in Part IV of the agreements is limited to utilities supplied by third party providers and work by third parties in respect of such utilities and not to utilities and other services provided by or on behalf of the owners.

58. It is recorded in the UT's decision, when setting out the case of Mrs Greenwood and Mrs Fox, that "the respondents regarded themselves as being obliged to reimburse the charges incurred by [Hardman] in paying third party contractors to licence, service and empty the [sewerage] system". The UT held that those charges and the cost of electricity required to run the sewerage system fall within paragraph 3(b). There is no respondent's notice in respect of that part of the UT's decision. For the sake of clarity and certainty for the future, however, it must be pointed out that, consistently with my earlier analysis and conclusions, I consider that that part of the UT's decision was wrong since the provision of the sewerage system is a communal service. In the absence of a respondent's notice, nothing can be done in respect of past charges already paid under paragraph 3(b) for electricity to operate the sewerage system, and to reimburse Hardman for payment to third party contractors engaged to empty and service the sewerage system and payment of the licence fee to the Environment Agency in respect of the system. In the future, however, all such costs and expenses are recoverable only in the pitch fee.

Conclusion

59. For all those reasons, I would dismiss this appeal.

Lord Justice Davis:

60. I agree.

Lord Justice Underhill:

61. I also agree