CA on appeal from Reading County Court (Mr Recorder Flather OBE QC) before Carnwath LJ; gage LJ. 27th March 2006.

Lord Justice Carnwath :

1. The issue in this appeal concerns the pitch fee payable by some of the occupiers of Warfield Park Mobile Home Park, near Bracknell, for the years commencing 1st March, 2001, 2002, and 2003. The appellants are the site Owner and Operator respectively, and the respondents represent the Occupiers of approximately 110 mobile homes out of 425 on site.

2. The Recorder (Gary Flather QC) was exercising a jurisdiction under section 4 of the Mobile Homes Act 1983 which gives the County Court jurisdiction to determine any question arising under an agreement to which the Act applies. The relevant agreements related to individual plots, and all contained standard terms set out in a Written Statement, as required by the Act. Clause 3 requires the Occupier to pay to the Operator an annual pitch fee which was initially fixed by agreement but is thereafter subject to review as provided in the agreement. By Clause 3(2) the Occupier undertakes: *"…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 charge(s) in respect of electricity, gas, water, telephone and other services." (It is common ground that "charged" in the written statement is a mistake for "charges".)*

3. By Clause 4 the Operator undertakes to maintain the parts of the Park which are not the responsibility of the individual Occupiers in good state of repair and condition and:

   "(3) At all times during the currency of this Agreement to use his best endeavours to provide and maintain the facilities and services available to the Pitch at the date or hereof or such further services as may be provided and keep the same in proper working order…."

4. Clause 4 (8) provides for the review of the Pitch fee on the review date and also provides that until determination the previous Pitch fee should continue to be paid, and the difference, if any, will be paid within fourteen days of determination. There is no provision for interest for any delay in the period before determination (in this case up to five years).

5. Clause 9 contains provision for any disputes to be referred to arbitration. By Clause 9 (2) (b): *"…if an Arbitrator is called upon to determine the amount of the annual Pitch fee he shall take into account in determining the same:*
   (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 factors which he shall consider relevant."

6. It is common ground that section 4 gives the County Court jurisdiction notwithstanding this arbitration clause. It is also clear that in such a case the County Court stands in the shoes of the arbitrator. As was said in ***Stroud v Weir Associates Ltd*** [1987] 1EGLR 190, 192 (d)-(e), (per Glidewell LJ): *"…In my view the Court cannot merely decide whether relevant factors have been taken into account but it can also decide the figures themselves: in other words, in this respect the Court is acting as an arbitrator would do…"*

   It appears from the context, and from the terms of the clause itself, that the primary purpose is to achieve an appropriate variation in the previous fee to take account of price-changes and other events in the immediate preceding year. However, the arbitrator or judge is given a wide discretion as to the factors to be taken into account: *"There are no precise rules laid down. It is left to the arbitrator or judge to decide."*(***Walker v Badcock*** [1997] 2 EGLR 163, 164 (e)-(f), per Staughton LJ).

   In the present case, as will be seen, an important factor was the changes in the permissible charging regime brought about by statutory interventions.

7. I would add that the special nature of the procedure, as what might be called a "quasi-arbitration", is also relevant to the role of the appellate court. Permission is unlikely to be granted by the Court of Appeal unless there is some obvious error causing injustice, or some point of general importance (cf Arbitration Act 1995 s 69). The County Court should adopt a similar approach when considering whether to grant permission to appeal, save that, if there is an obvious error, it should if possible be corrected then and there. In the present case, there was some uncertainty as to the extent of the grounds upon which permission to appeal had been given by the Recorder. However, the parties have been able to agree a list of the issues for the court, and it has been convenient to deal with them all as though permission had been granted.

Interventions by Ofwat and Ofgen

8. Part of the background to the dispute is to be found in the interventions made respectively by Ofwat and Ofgem in the arrangements for charging for services. These interventions were in response to concerns about profits being made by intermediaries in supply of the relevant services to sub-purchasers, particularly in cases where the intermediary was in a monopoly position.

9. The Water Resale Order 2001 came into effect on 1st April, 2001. The general effect was stated in the guidance notes: *"... anybody reselling water or sewerage services should charge no more than the amount they are charged by the water company, plus a reasonable administration charge if the reseller charges more than the average household bill for the region, he or she must be able to justify the higher amount (according to rules set out below).*

Maintenance costs for water or sewerage pipe-work are not included at the resale price; these costs should be recovered through the tenants rent or by separate agreement…"

The Order contained separate provisions for working out the charges depending on whether the purchasers on a particular estate or caravan park were metered or unmetered, or a combination of the two.

10. Similar controls in relation to gas and electricity were introduced, in the form of a Direction made by Ofgem, dated 29th January, 2002, and taking effect on the 1st January, 2003. The Direction provided for a "maximum resale price" applicable where gas or electricity supplied by an authorised supplier is resold for domestic use. Again there are different provisions for metered and unmetered supplies. In the former case the maximum price for resale is the same price as that paid to the authorised supplier by the person reselling it; any standing charge payable in addition to the charge for actual fuel is to be charged "pro-rata with the amounts payable for units of gas or electricity". In the case of unmetered supplies, the maximum retail price is to be estimated –

"with the objective that each person to whom gas or electricity is being resold by a particular retailer will pay a fair proportion of the overall costs incurred by the reseller in procuring gas or electricity for resale, including any standing charge, but excluding any fair proportion of the costs representing electricity or gas consumed in relation to common parts".

The issues

11. The issues can be grouped under four sub-headings:-

Water and Electricity Charges

i) Whether the site owner is entitled to recover a standing charge of £1.84 per month in respect of water and sewerage charges between July 2000 and 31st March 2001.
ii) Whether the Recorder erred by adding £12,000 to the Pitch fee payable from 1st April, 2001, to take account of the effect of the Water Resale Order 2001.
iii) Whether he erred in adding £20,000 to the Pitch fee from 1st January, 2003, to take account of the effect of the Ofgem Direction.
iv) Whether he was wrong to add two amounts of £5,000 each for Administration costs connected respectively with water and electricity services.

Leakages

v) Whether a deduction of 79p per month per Pitch should be made from the Pitch fee from March 2001 by reason of leakage from the water supply pipes.
vi) Whether a deduction of 10p per month per Pitch should be made from the Pitch fee payable from March 2003 by reason of an electricity power loss.

VAT

vii) What adjustments should be made to the Pitch fee to reflect the site Owners' inability following the changes in the method of calculating charges, to recover VAT payable on the supply to them?

Costs

viii) Whether the Recorder erred in not treating the appellant's letter of 14th December, 2004, as a Part 36 offer.
ix) Whether the Recorder erred in requiring the Occupiers to pay 35% to the site Owner's Costs.

It was agreed that issues of Costs should be left for determination following our decision on the substantive issues.

Water and Electricity Charges : *£1.84 Standing Charge*

12. This was a charge introduced from July 2000, but it was then overtaken by the Ofwat Order, and so it only affects the period to 31st March, 2001. In a letter to the Occupiers, the Owners explained that they were changing the method for charging for water and that the cost of maintaining the supply would be covered by a standing charge based "*on our budgeted maintenance costs*".

13. Two objections were made by the Occupiers to this charge, of which the Recorder upheld the first in the following terms:- *"…the first is that apart from exceptional expenses – none were shown here – this is routine expenditure that is being charged. The Owners have a contractual duty to keep and maintain the water services. Routine maintenance expenses like this spent in performing that duty are provided for in the Pitch fee because it includes a component built in over the years to cover those expenses. I think – in the absence of contrary evidence – this must be a safe presumption even though the size of the component in the Pitch fee for maintenance is unknown to me. And no contrary evidence emerged even though during the hearing I asked for any data on how the current Pitch fee was made up. As it stands therefore the Owners are double charging. I think that is the right way of looking at things and I agree with the Occupiers' analysis on this point. Accordingly I declare that the claim for a standing charge for this period of £1.84 per month was unlawful and unenforceable."*

14. Mr Blohm, for the Owners, challenges the assertion that there was "no contrary evidence". He refers to the evidence of Mr Sumner, the Managing Director of the site. In his statement he set out the history of the charges for water and sewerage. From 1982, until the changes introduced in July 2000, the position as stated by him was as follows:- *"…from 1st April, 1982, the basis of calculation was changed, instead of billing individual residents for sewerage, the supply company thereafter billed WPHL for both water usage and sewerage output. WPHL paid the Water Board a global sum for such items, together with a two inch meter charge. To cover all water and sewerage charges, the site Owner calculated a sum using the rateable value of the Mobile Home and a tariff published by the water company allowing WPHL to recover so much at so many pence in the pound. WPHL also recovered standing*

charge for water and sewerage which was the same for every Mobile Home user… it is important to bear in mind this was a charge for the use and maintenance of equipment, being the water supply pipes and apparatus and the sewerage system. The various charges were shown separately in the bills and accounts rendered to the Occupiers….the consequence was that all Occupiers paid: (i) A Pitch fee; (ii) Variable charges for the consumption of water and sewerage outputs; (iii) Water and Sewerage standing charges." (emphasis added)

15. There was some uncertainty before us as to whether this aspect of Mr Sumner's evidence had been challenged in cross examination. The terms of the judgment make clear that the Recorder himself raised some questions about the components of the pitch fee, but unfortunately there is no transcript from which one can ascertain the context. Mr Sumner as the Managing Director would have been the person most likely to have knowledge of this issue. Mr Collett for the Occupiers was unable to point us to any convincing evidence to the contrary. The best he could do was to refer to a statement by one of the Occupiers, Mr Milne, who asserted in relation to electricity charges (not water charges) that the cost of maintenance had been included in the pitch fee ever since he moved to the site in 1993. The basis of that assertion is not explained, but in any event it does not contradict Mr Sumner's evidence in relation to water charges.

16. I agree with Mr Blohm that the Recorder was wrong to say that there was "no contrary evidence". On the basis of material before us, I can see no reason for him having rejected Mr Sumner's evidence, nor any other proper basis for the "presumption" which he made. On this point, it seems to me, the appeal should succeed, and the declaration that the standing charge of £1.84 per month is unlawful should be set aside.

17. The next points concern the adjustments made to reflect respectively the effects of the Ofwat and Ofgem interventions. In relation to the Ofwat Order, the Recorder explained the issue as follows:- *"…inevitably the Ofwat Order meant a change in the reimbursement regime. Since the early 1980s the Owners had charged a "standing charge" which although unclearly described as such, very roughly equated to the costs of maintenance that incurred taken over the years as an average (sic). After 1st April, 2001 the Owners could not charge anything in addition for water. They could not charge the standing charge. They therefore… ask that this loss of a payment ought to be a matter I should have regard to under Clause 9 of the written agreement. To be more precise do I think this is a fact which I consider relevant that should be taken into account when determining the pitch fee? If I do then I should take it into account…"*

Having referred to the relevant Court of Appeal authorities, including those which I have referred, he commented: *"Mr Petitt (then appearing for the Occupiers) conceded that I could take it into account, I consider that I am bound to do so although I believe the extent and weight I give to the factor is still a matter of discretion when I come to balance up all the other factors I consider relevant to the determination".*

Before us, Mr Collett, as I understood him, did not resile from that concession, or suggest that this was not a matter to be taken into account. His objection was rather as to the weight given to it, having regard to the public policy considerations behind the Ofwat Order.

18. It was an odd feature of this case that, on the figures before the Recorder, the Owners had not in fact lost out as a result of the Ofwat Order, but had profited. The figures showed that -

"… from 1997 until the change of system after April 2001 the Owners were paying under the old system far more to the water company for their water than they were receiving back from the Occupiers under the old arrangement of variable charge and standing charge. This is striking and runs to several thousands of pounds on occasions. But once the Ofwat system is in place then for two years following (and there are no more statistics available) things improve…

It seems therefore submits Mr Petitt that the effect of Ofwat that I should take into account in the final analysis is that the Owners do very much better as a result of it. It is not exactly clear as to why they were making such sweeping losses before the Ofwat system. It probably was due to grievously low tariff being set by the water board… Nonetheless the Ofwat Order has changed things very much for the better in the figures of what is received for water from the Occupiers and what is paid to the water company. On the available figures (Mr Petitt) submits, the Owners, as resellers, are now making a profit on the supply of water which is the very thing that Ofwat intended to prevent. He submits therefore that there is no justification for raising the pitch fee on account of the Ofwat Order."

19. The Recorder did not fully accept this argument, he thought that - *"…in all fairness to the Owners an overall view has to be taken of their 'pot' filled from all their sources of income. This 'pot' will now have in it less than it otherwise would on account of the Ofwat Order. Secondly, I see from 2002 to 2003 figures that the Owners made a net loss in round terms of £41,000 and £16,000 respectively after repairs. Mr Petitt is applying gross figures, without deducting actual maintenance costs. It benefits no one to discourage the Owners to maintain the water and sewerage infrastructure. The infrastructure is old enough already and it can only get worse if no maintenance in done on it…"*

20. On the basis of figures for maintenance since 1997 he calculated an average annual figure of £14,000 which he took as covering "the foreseeable water maintenance costs", to which he added £1000 for contingences. He then took account of certain factors "from the Occupiers point of view", including the consideration that "the Ofwat system had brought benefit, not loss", which he accepted was "contrary to the spirit of the Ofwat Order". He concluded: *"…doing the best I can and balancing both sides against the other, I propose to add to the Pitch fee on account of the affect of the Ofwat Order, the annual sum of £12,000 to be divided between the Occupiers appropriately."* He proposed that the division should be on the basis of square footage.

21. Before us, Mr Collett has repeated in substance the objection taken by Mr Petitt before the Recorder, that by allowing the Owners to make more from the overall water charges than they had been doing before, the decision was contrary to the purpose of the Water Resale Order. However, he had some difficulty in converting this into an objection on legal grounds which would justify the intervention of this court on appeal. As I understand the judgment, the Recorder was seeking in effect to correct an anomaly in the previous arrangements, under which the Owners were in practice making substantial losses on the water supply. Once it is accepted that he was entitled to take into account the effects of the Ofwat Order on the overall position, I can see no error of law in his approach, which was, as I understand it, to provide a fair system for the future, without reproducing the anomalies of the past. This would be in line with the intentions of the Ofwat Order in that the charges for water supply would be directly related to cost to the Owners, while maintenance would be provided for separately within the pitch fee, as envisaged by the Ofwat guidance. The Recorder was also entitled to be concerned that there should be a sufficient incentive for the Owners to carry out adequate maintenance. I would dismiss this ground of appeal.

22. A similar point arises in relation to the electricity charges. The Owners claimed an allowance for the loss of profit that had resulted from the coming into force of the Ofgem Direction. The Recorder took the five year average profit which he assessed as £28,000 per year. He noted that Mr Petitt had conceded that loss of profit from the resale of electricity is "potentially relevant" to the pitch fee. The Recorder considered, although with some misgivings, that in principle he should take account of the effect of the Ofgem Direction on the Owners' profits: *"Service and maintenance are private contract matters and are not subject of the Direction. However, I am most uncomfortable with the size of these profits because to transfer them to the Pitch fee allows the Owners to breach the spirit of the Ofgem Direction. The whole concept is to prevent the reseller of electricity overcharging the captive consumer. Because of this I am going to discount the gross profit sales to allow only £20,000 of what it seems to me the Owner was enjoying as a profit against the supply of electricity to the Occupiers… During the course of the hearing I said I was not there to regulate the profit that the Owners make. Nonetheless I feel obliged in the interests of reasonableness and fairness to the Occupiers to rein in the Owners apparent circumvention of the spirit of the Ofgem Direction."*

23. Here again, Mr Collett objects that to allow even a reduced amount for this element was contrary to the public policy behind the Ofgem Direction. Again, however, he finds it difficult to find a legal hook on which to hang the objection. The Ofgem Direction was part of the background of the assessment process, and therefore something properly taken into account. There is nothing in the 1983 Act, nor in the terms of the individual agreements, which required it to be excluded. The Recorder also made clear that he had not ignored the policy considerations urged by the Occupiers, which were reflected in his final adjustments. I would reject this ground of appeal also.

Leakages

24. The Occupiers complained that they were bearing the cost of leakages from water-pipes within the control of the Owners, exacerbated by lack of maintenance. The Recorder noted that there were about eight miles of water-pipe supplying over four hundred homes. He commented: *"The pipes are old and undoubtedly they have leaked quite severely at certain times at the turn of the last century".*

    He referred to tests made by some of the Occupiers by measuring water flow in the early hours of the morning, the results of which he found "convincing" and "alarming". He also noted the submission of the Owners that – *"… leakage is inevitable and that the duty of the Owners is not to keep the pipes in perfect working order, but only in reasonable working order which permits a leakage rate which is acceptable."*

    On the basis of their expert evidence the leakage rate was within acceptable limits. According to the Occupiers on the other hand, the Owners had an interest in the supply of water which enhances the saleability of the plots on the site. Furthermore, the present leakages, they argued, were "due to the breach of the obligation to maintain historically", and the Owners would have no incentive to deal with the problem if the Occupiers were liable to pay for all the leakages.

25. Having set out the arguments on both sides, the Recorder expressed his conclusion very briefly:

    "It seems to me that both sides have a lot to say on this issue. They both enjoy the benefits that come from this supply of water.

    Doing the best I can I think that both sides should share the cost of leakages. Since it is an uneven number I declare that the unmetered Pitches will be rebated by 79p per month from 2001 to overcome this problem."

26. Mr Blohm criticises the Recorder's approach. He says correctly that the Recorder has not in terms found that the Owners were in breach of their contractual obligation of maintenance, and that on the evidence the leakages were within reasonable limits. In those circumstances there was no reason not to allow the Owners the full amount of the cost of leakages. I agree that it might have been more helpful if the Recorder had made a specific finding on the contentious issue whether the Owners were in breach of their obligations. However, I cannot accept that finding such a breach was an essential step in the reasoning. He was entitled to take the view that this was a shared problem, and that the Owners had an equal interest in seeking to reduce it. I can see no error of law in the way he approached the matter, which was well within the discretion given to him by the clause 9(2). I would dismiss this ground of appeal.

27. There was a similar issue about electrical power loss, although in this case it was not related to an argument about the obligation to maintain. The evidence was that power loss within the system would equate to one to two percent of the overall power, equating to 21p per pitch per month. The Recorder took the view that this loss

should be shared between Owners and Occupiers in the same way as water leakages. Again, Mr Blohm objects that, since there was no suggestion that this was due to any fault by the Owners, there was no reason for them not to be able to recover the full loss. Again, however, I am unable to see any error of law in the way the Recorder approached the matter as a matter of principle.

28. However, it seems that he was in error in giving effect to his ruling by directing that there should be a *reduction* of 10p per pitch per month. Since electricity is measured at the individual homes, the Occupiers are not paying anything for power loss in the system outside their homes. In this respect the position is different from that for water. As Mr Blohm says, if the Recorder had been intending to share this loss equally, he should have *increased* the pitch fee to take account of it. Mr Collett fairly accepted that this seemed to be correct. Accordingly, the appeal to this extent should be allowed and the Order adjusted accordingly.

Administration Costs

29. In relation to both water and electricity, the Recorder made an allowance of £5000 for administrative costs. It is common ground that this was an error so far as relates to water costs, because the amount of any such charge is limited by the Water Resale Order. This was pointed out to the Recorder when he handed down his Order and he asked for it to be drawn to the attention of the Court of Appeal. I assume that he did not simply make the adjustment himself, because there might be an outstanding issue about the principle of this addition. In any event it is agreed that on this basis the administration costs should be limited to 1.5 per day per pitch (or £5.48 per pitch per year).

30. So far as the electricity charge is concerned there is no equivalent limit in the Ofgem Direction. Mr Collett, for the Occupiers, submitted that there was no proper evidential support for the figure found by the Recorder. However, Mr Blohm was able to show us that the Recorder did have evidential material before him relating to electricity costs. Although this might have been spelt out a little more clearly in the Judgment, I cannot see any error of law in his conclusion.

VAT

31. In the Recorder's Order, the adjustments for the effect of the Ofwat Order and the Ofgem Direction respectively are referred to as "£12,000 plus VAT" and "£20,000 plus VAT". The figures for administration costs in both cases are also shown as "plus VAT", but it is common ground that these references to VAT should be deleted.

32. There seems to have been some confusion before the Recorder as to precisely how VAT came into the picture. In the main judgment, under the heading "VAT", he commented: *"I understand that VAT would not be charged if the water and electricity repair work was separated and charged separately against the Owners. On the other hand I understand that it would be charged if water or electricity maintenance work was included as an item within the Pitch fee. I am not in a position to say which of these propositions is correct but obviously if it is chargeable on the Pitch fee then it will have to be paid by the Occupiers. So far as I order and direct below that VAT is to be paid, that should be read to be a direction that it should be paid if applicable".*

Accordingly the references to VAT in the Order were seen by him as being subject to an issue to be resolved in the future as to whether VAT was in fact "applicable".

33. When the judgment was handed-down on the 5th September there was some further discussion of this issue. Mr Petitt, for the Occupiers, argued that it was for the Owner to show that there would be any loss by reason of VAT and they had failed to do so. However, the Recorder decided that it would not be proper for him to review his judgment by seeking to resolve the VAT issue any further than he had done so. He said: *"… what that amounts to, although it is in the implementation of the judgment and in that sense I can review it, will require further evidence and possibly a return to evidence, although I thought it was incomplete, that was heard in the original hearing and I do not think I can go back to it and that is again something that the parties will have to resolve themselves and if they cannot resolve it, I cannot help them."*

He then made some suggestions as to how the parties might work towards a compromise, which he encouraged. Unfortunately that has not been achieved.

34. Before this court the Recorder was criticised by both parties for not having resolved the issue one way or the other. The Owners submit that allowances should be made for VAT; the Occupiers say that VAT should be excluded altogether.

35. It is important to bear in mind that the issue is not whether VAT can be charged to the residents directly, but whether the Owners are able to recoup the VAT that they are required to pay to contractors for carrying out maintenance and other services necessary to maintain the systems. The essential point was put clearly in Mr Sumner's statement before the Recorder: *"… if the cost of maintenance is incorporated within the pitch fee rather than charged separately then the pitch fee has to be increased by the gross cost of the maintenance, including VAT. The reason is that pitch fee is exempt from VAT purposes and the VAT on maintenance costs incorporated within it cannot therefore be recovered. If the maintenance costs are separately charged then the VAT can be reclaimed."*

A further confusion has been introduced to the argument by the different treatment accorded for VAT purposes to pitch fees, which are exempt from VAT, and charges for water services which are zero-rated. From the point of view of the Owners, it matters in which form the maintenance costs are passed on to the occupiers. If they are "zero-rated" they can recover VAT on inputs, whereas if they are "exempt" they cannot. However, from the point of view of the Occupiers, the difference is neutral, since they do not have to pay VAT in either case. Thus Mr

Collett's attempted reliance (at a very late stage of the argument before this court) on the fact that in the invoices to residents none of the items were shown as attracting VAT was misconceived, as I think he in the end accepted.

36. I see no difficulty with the principle as stated by Mr Sumner. The difficulty I think is in applying it to the facts of this case, having regard to the way in which the figures of £12,000 and £20,000 were calculated by the Recorder. In both cases the exercise, as already described, was far from precise, but was part of a broad approach to arriving at a fair overall result. In relation to water charges, it seems reasonably clear from the passages I have already quoted that the Recorder saw the figure of £12,000 as representing the appropriate cost of maintenance. On that basis, in principle the Owner should be entitled to an adjustment to enable VAT to be taken into account. In relation to electricity, the position is much less clear.

37. Mr Blohm was forced to accept that, on any view, the figure of £20,000 was not all attributable to costs of maintenance but contained a substantial profit element. He sought to make an apportionment on the basis of figures in the documents. However, this was not something attempted by the Recorder. The Recorder referred to the £20,000 simply as "gross profit", without making any apportionment. He was also unhappy about the extent to which it should be taken into account at all in fixing the pitch fee. I do not think it is fair to treat him as having notionally attributed that amount, or indeed any part of it, to items to which VAT was automatically to be added. He envisaged that, if the parties were unable to agree, there would need to be a further hearing possibly with further evidence.

38. Neither side wishes us to send the matter back for further investigation. Accordingly we have to arrive at a reasonable result on the material before us. It seems to me that having regard to the broad approach properly adopted by the Recorder, fairness will be achieved if we allow VAT on the figure of £12,000 for water in full, but we disallow any VAT addition on the figure of £20,000 for electricity. The overall result, taking the rough with the smooth, should be seen by both sides as achieving a reasonable result in line with the spirit of the Recorder's findings.

Conclusion

39. As has been seen the Recorder is given a wide discretion by the agreement. The width and unstructured nature of the discretion may seem surprising in relation to an issue as important to residents, and as potentially contentious, as that of pitch fees. However, it is not for us to rewrite the agreement to introduce qualifications or limitations on policy grounds, however attractive. I hope that the heat engendered by the present dispute is not typical. I would see merit in the Law Commission being asked to look at the machinery for resolving such disputes, in the context of their current study of dispute resolution procedures in the housing field.

40. We must deal with the issues within the confines of the law as it is. On that basis, I would allow the appeal in limited respects outlined above. In summary, under (i) the standing charge of £1.84 will be reinstated; under (iv) the administrative charge for water will be reduced to the figure permitted by the Ofwat Order; under (vi) the figure for electricity power loss will be treated as and addition rather than a deduction; under (vii) VAT will be allowed on the figure of £12,000 for water maintenance but not otherwise. In other respects the appeals fail. Issues of costs will be dealt with separately.

Lord Justice Gage:

41. I agree.

Leslie Blohm (instructed by Messrs. Tozers) for the Appellants
Ivor Collett (instructed by Messrs Charles Hoile & Co) for the Respondents