



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KC/PHI/2019/0025

Park Home Address : 127 Three Star Park Bedford Rd,
Lower Stondon, Beds SG16 6DY

Applicant : Tingdene Parks Ltd

Representative : Ryan and Frost Solicitors

Respondent : Mr R Martin

Date of Application : Received 11 September 2019

Type of application : to determine the new pitch fee -
paragraph 18 of Schedule 1 to the
Mobile Homes Act 1983, as amended (“the
Act”)

The Tribunal : Mary Hardman FRICS IRRV(Hons)

DECISION

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1. The Tribunal determines that the new pitch fee for the pitch known as 127 Three Star Park Bedford Rd, Lower Stondon Beds SG16 6DY as from **1 May 2019, is £1510.92 per annum.**

Reasons

Introduction

2. The Respondent is the occupier of the park home at the Park Home Address. They have not agreed to an increase in pitch fees for 2019. The site owner must therefore apply to this Tribunal if it is to obtain an increase in pitch fee. There does not appear to be any dispute that the annual review date for pitch fees is on 1 May 2019 as set out in the occupation agreement.
3. On the 25 February 2019 notice of the proposed new pitch fee, in the prescribed form, was served on the respondent, explaining that as from the 1 May 2019 the pitch fee would be increased by 2.5% in line with RPI for January 2019, in accordance with the Office for National Statistics RPI All Items table.
4. An application dated 18 July 2019 but received on 11 September 2019 was made to the Tribunal for determination of a new level of pitch fee. The Tribunal issued a directions Order on 25 September 2019 saying that the Tribunal

proposed to deal with this application by considering the papers only, without a hearing, and would do so on or after 9 December 2019 unless any party requested an oral hearing which would then be arranged. No such request was received.

The Occupation Agreement

5. A copy of the original agreement has been produced by the Applicant which complies in all material respects with those terms imposed by the **Mobile Homes Act 1983** (“the 1983 Act”) as it was. The only material amendments since have been to give this Tribunal, rather than the County Court, jurisdiction to deal with the approval of pitch fees if agreement cannot be reached.
6. The original tenancy agreement was between Three Star Park and Mrs K Bignall and commenced on 2 May 1994. It was transferred by way of assignment to a Mrs and Mrs Sugden (date unknown), subsequently to Mr and Mrs Baker on 3 August 2007 and again by way of assignment to Mr R Martin on 27 April 2015.

The Law

7. The site owner can only increase the pitch fee annually with the agreement of the occupier or, in the absence of agreement, by a determination of the new pitch fee by this Tribunal.
8. The site owner must give the occupier written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the prescribed form has been used and the relevant time limits have been complied with in this case.
9. Paragraph 18 (1) requires that

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) in the case of a protected site in England, 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 subparagraph);

(ab) in the case of a protected site in England, 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 subparagraph);

10. As to the amount of any increase or decrease in the pitch fee, the starting point is that regard shall be had to the RPI. Schedule 1, paragraph 20 of the 1983 Act, which overrides the express provisions, goes further than this by saying that there is a presumption that the pitch fee will change with the RPI, unless this would be unreasonable having regard to paragraph 18(1).

11. Upon application, the Tribunal must determine 2 things. Firstly, that a change in the pitch fee is reasonable and, if so, it must determine the new pitch fee. The Tribunal is not deciding whether the level of the pitch fee is reasonable.

Background

12. The Applicant gave notice of a proposal to increase the pitch fee on 25 February 2019 to £1510.92, from the previous £1474.08 in line with a 2.5% increase in RPI. There is no issue taken as to the timeliness of the notice, whether appropriate notice was given or the appropriate rate to apply

Site Inspection

13. As neither party had raised issues which the Tribunal believed sufficiently justified an inspection of the site or the pitch, none has been arranged in this case. A comprehensive set of photographs was supplied as part of their evidence by the Respondent.

The Respondent's case

14. The Tribunal directions' required the Respondent to file a response to the application, setting out why agreement cannot be reached on the suggested increase of pitch fee in accordance with the RPI.
15. His submission comprised his letter of 4 April 2019 to Tingdene Parks together with a covering letter dated 22 October 2019 and a further submission of a set of 17 photographs dated 17 November 2019. These variously illustrated standing water outside the pitch, the park entrance, the park office and various other parts of the site, and were accompanied by some further assertions.
16. In objecting to the increase, the Respondent stated that he believed that the site was 'shabby, untidy and very unkept' with uneven road surfaces.
17. He stated that the drainage was very poor resulting in standing water and flooding following rain. He did not believe that there was drainage near his pitch.
18. He also believed that the lighting in that area of the park was inadequate and that cars were allowed to park on the roads and verges contrary to the Park rules.
19. He accepted that some of the potholes in the road has been repaired but did not believe that the repairs would last very long.
20. He believed that he should have received notification of the new electricity charges and did not believe that it was sufficient to display such notifications on the site notice board and that they should have been informed of the installation of a defibrillator on the site.
21. He also stated that the full-time manager had retired in July 2017 and the replacement part-time manager retired in August 2019. The position was now covered by a weekly visit by a manager from another park. He did not state what the impact of this might be.
22. There was a park home on the site that had been vacant for some 18 months and the garden was completely overgrown and would attracts rats and vermin

23. Finally, the hedge at the front of the park has not been cut for some considerable time.

The Applicant's case

24. The Applicant submitted a Statement of Case dated 13 November 2019, an undated witness statement and a second witness statement dated 27 November 2019 in response to the respondent's submission of 17 November 2019.
25. In these he stated that there had been no deterioration in the condition of the Park, no decrease in amenity or reduction in services supplied to the Park or to Mr Martin's home either in the year to 30.4.2019 or in previous years.
26. He denied that the site was shabby or unkempt, and that roads were defective or that drainage was poor. Maintenance work was undertaken when necessary and whilst there was a tendency for rainwater to form surface pools this did not last for long nor could it be considered a hazard. He supplied invoices to illustrate repairs to potholes and stated that the company had not received complaints from other residents regarding 'puddling rainwater'.
27. He accepted that the gully outside Mr Martin's home had blocked but this had been cleared shortly after 20 November 2019.
28. He believed that the site lighting was adequate and there had been no change in recent years.
29. He accepted that residents and visitors did park in prohibited areas. This was not easily policed but that the company would write to 'offenders' when complaints are received.
30. He accepted that residents had not received prior notification of the new electricity charges but that this was not required and any residents who had contacted the company had been sent an explanatory note and a copy of the notice was affixed to the park notice board. He also acknowledged that notice was not given to the residents of the defibrillator – which he believed could have been seen as an improvement.
31. He stated that the site manager had retired in July 2017 but that there was no diminution in the service provided to residents as his principal duties related to sales for the new development of 34 homes on the site. When the part-time manager retired in August 2019 he agreed that he was replaced by a manager who visited weekly but that the contact details for the Operations Manager were available on the park notice board.
32. He accepted that one of the plots had been vacant but denied that it was 'completely overgrown' and whilst it needed some tidying, this had now been done. He denied there were any rats or vermin.
33. Finally, the hedge to the front of the park had now been cut back given the bird nesting season had now finished.

Determination

34. The Tribunal has considered the competing arguments of the parties.
35. For the purposes of the 1983 Act, the issue is not the actual condition of the site, nor indeed the actual amenity of the site. Whilst we may accept that the site has not always been maintained to a standard that the Respondent may expect, we have to consider whether there has been any **deterioration** in the condition or **decrease** in the amenity of the site in the relevant period, and, if we do so find, whether it would thereby be unreasonable for the pitch fee to be increased on the basis of the increase in the RPI index.
36. “Amenity” in this context means the quality of being agreeable or pleasant and so we must look at any decrease in the pleasantness of the site or those features of the site which are agreeable from the occupier’s perspective.
37. The Tribunal notes the photos submitted by the Respondent which, in our view, show pooling and sitting of surface water rather than a ‘flooded road’. In the absence in the relevant period of any significant change in the topography of the Park or works to the current drainage system which have made the drainage worse, it appears that the drainage system is the same as it has been for a number of years and there has not been a deterioration or decrease in the condition or amenity of the Park in relation to drainage.
38. It also notes the submission in respect of the road surface and potholes and that Mr Martin accepts that some of these have been repaired. Whilst he may believe that the repairs will not be effective in the long term this is not something which the Tribunal is able to forecast.
39. The tribunal accepts that it is likely on a mobile home park that there will be homes that are vacant from time to time and which may be in a less than satisfactory state. The tribunal did not believe that, given it relates to only one pitch, that this was excessive nor had it led to any significant detriment to the amenity of the site.
40. Under the implied terms of the pitch agreement, the owner is required upon request to provide, free of charge, documentary evidence in support of, and an explanation of, any charges for electricity. The applicant states that an explanatory note was send to residents who contacted the company. Regardless of the position, this is not relevant to the question we have to determine.
41. The Tribunal acknowledges that the on-site management of the park has been subject to change over the last 12 months and that it is understandable that there is concern about the potential impact of such change. However no evidence was produced of any impact of this.

Conclusions

42. The Tribunal does not find that there has been any measurable deterioration in the condition or decrease in the amenity of the Park in the relevant period.

43. We accept the presumption that the pitch fee should be increased in line with the increase in RPI index over the relevant period shall apply. We are not satisfied that the Respondent has provided sufficient evidence to displace that presumption.
44. We determine that the pitch fee should increase from the review date of 1 May 2019 in accordance with the Notice dated 25 February 2019.
45. If the Respondent has continued to pay the original pitch fee since that date, they must pay the difference to the Applicant

Costs

46. Neither party applied for costs and we make no such award.

**Mary E Hardman FRICS IRRV(Hons)
Deputy Regional Valuer**

11 December 2019

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.