FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/19UH/PHI/2020/0001**
Property	**:**	**36 Handborough Park, Chickerell Road, Weymouth, Dorset DT4 9TP**
Applicant	**:**	**Wyldecrest Parks (Management) Limited**
Representative	**:**	**Mr David Sunderland**
Respondent	**:**	**Mr A and Mrs S J Hallam**
Representative	**:**	**-**
Type of Application	**:**	**Determination of pitch fee: Mobile Homes Act 1983 (as amended)**
Tribunal Members	**:**	**Judge E Morrison**
	:	
Date of decision	**:**	**15 April 2020**

DECISION

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The application

1. The applicant site owner has applied to the tribunal for a determination of the new level of pitch fee payable by the respondent occupiers of 36 Handborough Park, pursuant to paragraph 16 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended) ("the Act").

2. The applicant has also requested an order for reimbursement of the tribunal application fee.

Summary of decision

3. The pitch fee payable by the respondents as from 1 January 2020 is £188.17 per month in accordance with the Pitch Fee Review Notice.

The pitch fee review provisions

4. Chapter 2 of Part 1 of Schedule 1 to the Act sets out the Implied Terms incorporated into every written statement under the Act, and they take effect notwithstanding any express term to the contrary. The provisions most relevant to this case are as follows:

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   The pitch fee can only be changed in accordance with paragraph 17, either—

   (a) with the agreement of the occupier, or

   (b) if the appropriate judicial body, 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.

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   (1) The pitch fee shall be reviewed annually as at the review date.

   (2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

   (2A) A notice under subparagraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

   (3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

   (4) If the occupier does not agree to the proposed new pitch fee—

(a) the owner or the occupier may apply to the appropriate judicial body for an order under paragraph 16(b) determining the amount of the new pitch fee;

(b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and

(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body order determining the amount of the new pitch fee.

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but, in the case of an application in relation to a protected site in England, no later than three months after the review date. …

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(1) When determining the amount of the new pitch fee particular regard shall be had to—

(a) …

(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 [26 May 2013] (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);

…

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(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.

…

5. Section 4 of the Act gives jurisdiction to the tribunal to adjudicate in applications made under paragraph 16.

The evidence before the tribunal

6. The tribunal issued directions dated 4 March 2020 providing that the application would be determined on the papers without an oral hearing unless a party objected. No objection having been made, the evidence before the tribunal consists of the bundle prepared by the applicant, containing the parties' respective statements of case with documents in support.

The issue

7. It is not disputed that the applicant has served an appropriate pitch fee review notice, or that the proposed increase in the pitch fee from £184.30 per month to £188.17 per month as from 1 January 2020 represents only the increase in the retail prices index (RPI) as calculated by reference to paragraph 20 of the Implied Terms. The sole ground for disputing the increase is the submission that the site owner has breached the agreement with the occupiers by refusing to provide a designated parking space on the site.

The respondents' case

8. The respondents have provided a copy of the written agreement dated 9 September 2010, made between them and the previous site owner pursuant to section 1 of the Act. It includes a plan showing the size and location of the pitch. The pitch itself contains no parking space, and there is no mention of parking or a parking space anywhere in the agreement. However, the occupiers rely on a separate letter to them from the site owner of the same date which includes the following:

   "We further confirm as discussed that a car parking space will be made available for you on site, however, as explained this will be in a different position to the one viewed by you, but will be closer to No 36".

9. The respondents, supported by statements from neighbours, say that a marked space designated for No. 36 was provided when the respondents moved in on 1 October 2010. Later, due to the re-siting of another home, a different space was provided by the previous site owner, confirmed in a letter from the site owner dated 26 March 2014. However, it transpired that this space intrudes, at least in part, on what has become pitch No. 40. The applicant has now told the respondents that they have no contractual right to a designated parking space. The respondents' case is that this has caused a decrease in amenity, and that the pitch fee should not be increased for this reason. They say, although without providing any evidence in support, that every other resident on the site has at least one personal parking space.

The applicant's case

10. The applicant states that the written agreement is exhaustive of the terms between the parties, and that this does not make any mention of a designated parking space. The letter from the previous site owner is not contractual. The respondents remain free to park their car in any parking spaces on the common parts of the site, and therefore there has been no reduction in amenity within the meaning of paragraph 18 (1)(aa) of the Implied Terms which might affect the level of the pitch fee. It is also submitted that there is no other matter to be taken into account under paragraph 18 of sufficient weight to displace the statutory presumption of an increase in line with the RPI.

11. The applicant submits that using the pitch fee review process to try to resolve a disagreement over parking is an abuse of process and unreasonable, and warrants an order that the respondents reimburse the application fee paid by the applicant.

Discussion and determination

12. The only question is whether it would be unreasonable to increase the pitch fee in line with the RPI on the ground that the respondents have been deprived of their alleged right to a designated parking space. The tribunal answers this question in the negative.

13. Paragraph 18 requires the tribunal to "have particular regard" to "… any any decrease in the amenity, of the site … which is occupied or controlled by the owner…". The respondents' case simply does not establish any decrease in the amenity of the site; their argument is simply that an amenity personal to them - the right to a designated parking space - has been withdrawn, although it is noted that there is no evidence that they have actually been required to vacate the parking space they have been using for some years.

14. The tribunal does not consider that the loss of a right to a designated parking space benefitting one pitch can alone, without any other physical alteration at the site, constitute a "decrease in the amenity of the site" within the meaning of paragraph 18(1)(aa). That provision is clearly directed at changes which have some physical manifestation or observable effect on the site; such has not occurred in this case.

15. Nor does the tribunal consider that this type of loss can constitute a factor, outside those matters specified in paragraph 18, of sufficient weight to make it unreasonable to disapply the statutory presumption of an increase in the pitch fee in line with the RPI. This is because other, more appropriate remedies are available.

16. It is therefore not necessary for the tribunal in this case to determine whether or not the respondents do in fact have a contractual right to a designated parking space. It may not be as black and white a question as the applicant suggests. It might be necessary to hear evidence in

connection with the letter of 9 September 2010; it is also noted that the letter of 26 March 2014 itself suggests there was consideration provided for the provision of a parking space at that time.

17. The tribunal also wishes to comment on the applicant's submissions, as they are somewhat misleading in respect of the applicable law. While it is right that the written statement given to the respondents under section 1 of the Act, which has never been formally amended, contains no mention of a right to a parking space, it does not follow that a separate agreement on the matter cannot exist. The applicant states that section 1(5) of the Act provides that an express term which is not contained in the written agreement is unenforceable. However the bar on enforcement in section 1(5) only applies to the site owner and its successors in title; it does not apply to enforcement by an occupier. Moreover, section 1(5) explicitly recognises that there may be express terms which are *not* contained in the written agreement. It should also be noted that while the applicant cites *Crittenden (Warren Park) Limited v Elliott* (1998) 75 P.& C.R. 20 as authority for the proposition that the written agreement is exhaustive of the terms between the parties, the applicant fails to mention that the passage referred to -top of p.26 – is within the dissenting judgment only. It should therefore not be propounded as the judgment of the court.

18. The tribunal has jurisdiction to determine any question arising under the Act or any agreement to which it applies. Section 1 states that the Act applies to any agreement under which the occupier is entitled to station a mobile home on a protected site and to occupy it as a main residence. If the respondents wish to dispute the issue of whether they have a contractual right to a designated parking space they should do so by making an application under section 4 of the Act, not by disputing an otherwise straightforward increase in the pitch fee.

19. Although the applicant has succeeded in its application, it cannot be said that the respondents have acted unreasonably or improperly in contesting it, and, exercising the tribunal's wide discretion, the request for an order for reimbursement of the modest application fee of £20.00 is refused.

Dated: 15 April 2020

Judge E Morrison

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.