



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/18UC/PHI/2020/0004

Property : 1a Alexander Walk Ringswell Park, Exeter,
Devon, EX2 5QA

Applicant : Sovereign Park Homes Estates Limited

Representative :

Respondents : Mr Bowhay

Representative : -

Type of Application : Review of Pitch Fee: Mobile Homes Act
1983 (as amended)

Tribunal Member : Mr D Banfield FRICS
Mr W Gater FRICS
Judge Dobson
Judge Tildesley OBE

Hearing : Decision on Papers

Date of Decision : 23 June 2020

DECISION

Background

1. The Applicant site owner seeks a determination of the pitch fee of £115.78 payable by the Respondent as from 1 January 2020.
2. The Tribunal required the Applicant to serve the Application and directions on the Respondent. The Applicant confirmed that this had been done
3. On 22 April 2020 the Tribunal directed the Application to be determined on the papers unless a party objected within 28 days. The Tribunal received no objections. The Tribunal required the Respondent to file his statement of case and serve it on the Applicant and the Applicant was given the right of reply.

Consideration

4. Ringswell Park is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act).
5. The Respondent's right to station his mobile home on the pitch at Ringswell is governed by the terms of the Written Agreement with the Applicant and the provisions of the 1983 Act.
6. The Applicant supplied a draft copy of a written agreement which it said applied to all the pitches. The Tribunal sought clarification of the last review date, the new proposal date, the effective date and the RPI adjustment made.
7. The Applicant said that the Respondent under the Agreement is liable to pay a pitch fee monthly and that the pitch fee is reviewed annually on 1 January each year. The Respondent has not disputed the accuracy of those statements
8. The Applicant further stated that it served the Respondent with the prescribed pitch review form proposing the new pitch fee on 19 November 2019 which was more than 28 days prior to the review date of 1 January 2020 and that the Application to the Tribunal to determine the pitch fee was made on 3 February 2020 which was within the period starting 28 days to three months after the review date. The Applicant explained that it applied the RPI of 2.1 per cent as published in October 2019 which was the latest published 12 month RPI figure available before the notice of review was served.
9. Having regard to its findings at 8 above the Tribunal is satisfied that the Applicant had complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondent.

10. The Tribunal is required to determine whether the proposed increase in pitch fee is reasonable. The Tribunal is not deciding whether the level of pitch fee is reasonable.
11. Pitch fee is defined in paragraph 29 of Part 1 of Schedule 1 of the 1983 Act as:

"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, sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts."
12. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase or decrease in the RPI since the last review date.
13. The Applicant has restricted the increase in pitch fee to the percentage increase in the RPI.
14. The Applicant referred to two decisions of the Upper Tribunal: *Wyldecrest Parks (Management) Ltd v Kenyon* [2017] UKUT 28 (LC) and *Vyse v Wyldecrest Parks (Management) Ltd*, [2017] UKUT 24 (LC), where the increase sought was above RPI.
15. In *Vyse*, HHJ Alice Robinson said as follows:

"There are a substantial number of mobile home sites in England occupied pursuant to pitch agreements which provide for relatively modest pitch fees. The legislative framework for determining any change in pitch fee provides a narrow basis on which to do so which no doubt provides an element of certainty and consistency that is of benefit to site owners and pitch occupiers alike. The costs of litigating about changes in pitch fee in the FTT and in the Tribunal are not insubstantial and will almost invariably be disproportionate to any sum in issue. I accept the submissions...that an interpretation which results in uncertainty and argument at many pitch fee reviews is to be avoided and that the application of RPI is straightforward and provides certainty for all parties"
16. In *Kenyon*, Judge Martin Roger QC established the following principles in respect of reviews of pitch fees:
 - a) The direction in paragraph 16(b) that in the absence of agreement the pitch fee may be changed only "if the appropriate judicial body ... considers it reasonable" for there to be a change is more than just a pre-condition; it imports a standard of reasonableness, to be applied in the context of the other statutory provisions, which

should guide the tribunal when it is asked to determine the amount of a new pitch fee.

- b) In every case “particular regard” must be had to the factors in paragraph 18(1), but these are not the only factors which may influence the amount by which it is reasonable for a pitch fee to change.
 - c) No weight may be given in any case to the factors identified in paragraphs 18(1A) and 19.
 - d) With those mandatory considerations well in mind the starting point is then the presumption in paragraph 20(A)(1) of an annual increase or reduction by no more than the change in RPI. This is a strong presumption, but it is neither an entitlement nor a maximum.
 - e) The effect of the presumption is that an increase (or decrease) “no more than” the change in RPI will be justified, unless one of the factors mentioned in paragraph 18(1) makes that limit unreasonable, in which case the presumption will not apply.
 - f) Even if none of the factors in paragraph 18(1) applies, some other important factor may nevertheless rebut the presumption and make it reasonable that a pitch fee should increase by a greater amount than the change in RPI.
17. The Respondent put forward no case challenging the increase in the pitch fee.
18. The Applicant submitted that there had been no deterioration of the site and that the site had remained in the condition that it has always been in. The Applicant argued that it would be reasonable for the Tribunal to approve the proposed increase in line with RPI.
19. The Tribunal’s starting point is that the pitch fee should be increased in line with RPI. In determining whether the presumption applies, the Tribunal must have regard to the matters identified in paragraphs 18 and 19 Part 1 of Schedule 1 of the 1983 Act. The Respondent did not challenge the Applicant’s case.
20. The Tribunal is satisfied that the Respondent has not advanced a case to displace the presumption that the pitch fee should be increased in line with RPI. The Tribunal, therefore, confirms the increase.

Decision

21. Given the above the above circumstances the Tribunal determines that the proposed increase in pitch fee is reasonable. Further the Tribunal determines a pitch fee of £115.78 with effect from 1 January 2020.
22. The Tribunal is minded to order the Respondent to reimburse the Applicant with the Tribunal application fee of £20. This order will take effect unless the Respondent makes representations in writing to the Tribunal on why he should not reimburse the fee by 7 July 2020.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email 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.

Due to the Covid 19 pandemic, communications to the Tribunal MUST be made by email to rpsouthern@justice.gov.uk. All communications must clearly state the Case Number and address of the premises.