FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/18UC/PHI/2020/0030
Property	:	7 Marlborough Drive, Ringswell Park, Exeter, Devon, EX2 5QF
Applicant	:	Sovereign Park Homes Estates Limited
Representative	:	
Respondents	:	Mr Martin and Mrs Clark
Representative	:	-
Type of Application	:	Review of Pitch Fee: Mobile Homes Act 1983 (as amended)
Tribunal Members	:	Judge M Tildesley OBE Judge J Dobson Mr D Banfield FRICS Mr W H Gater FRICS MCIArb
Date of Decision	:	23rd June 2020

CORRECTED A TYPOGRAPHICAL ERROR
UNDER RULE 50 OF TRIBUNAL PROCEDURES RULES 2013
Re the Amount set out in Paragraph 28

Background

1. The Applicant site owner seeks a determination of the pitch fee of £152.86 payable by the Respondents as from 1 January 2020.

2. The Tribunal required the Applicant to serve the Application and directions on the Respondents. 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 Respondents to file their 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 Respondents' right to station their 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 Respondents under the Agreement are liable to pay a pitch fee monthly and that the pitch fee is reviewed annually on 1 January each year. The Respondents have not disputed the accuracy of those statements.

8. The Applicant further stated that it served the Respondents 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 Respondents.

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*, 2 [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 consideration well in mind the starting point is then the presumption in paragraph 20(A1) 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 Respondents argued that the increase in pitch fee was not justified. The Respondents said that drainage and sewerage systems were in need of serious repair, and that the Applicant refused to take any responsibility for the underground cables providing electricity to the site. The Respondents further alleged that the Applicant had failed to upgrade street lights, and that most of the park remained poorly lit. The Respondents acknowledged that some work had been done to replace the old lamps. The Respondents stated that all road surfaces were in desperate need of resurfacing, and that the roadways constituted a trip hazard. Finally, the Respondents said that the trees on Sidmouth Road were interfering with SKY and BT supply and that weeds were generally out of control across the whole site.

18. The Respondents in conclusion argued that the Applicant was demanding increases, year upon year, without any meaningful work being done, further exacerbating the deterioration of the common areas and which threatens both the safety of the community here in Ringswell Park and the value of their home.

19. The Respondents additionally attached a letter to the Applicant which also disputed the increase, stating the same or similar issues, adding a complaint that Open Reach say that the Applicant will not allow digging up of the Park to enable the laying of fibre optic cable, a complaint about estate agent signs and referring to general neglect.

20. The Applicant pointed out that the Respondents had supplied no particulars that the drainage and sewerage system were in need of repair. The Applicant said that in any event paragraph 22(c) of Chapter 2 of Part 1 of Schedule 1 of the 1983 Act only required the Applicant to maintain the system and the matters prescribed by paragraph 18(1) extend only to reduction and deterioration and, consequently, whether or not the system was fit for purpose (which was denied) was not relevant.

21. The Applicant stated that it was the responsibility of Western Power to supply and maintain the cabling to the site. The Applicant referred to condition 7.3 of the site licence which confirmed its view that it had no responsibility for the maintenance of the electrical installations on the site which belonged to Western Power

22. The Applicant asserted that it had maintained the site, and that from September 2019 had employed a park maintenance operative who regularly visited the site to carry out general maintenance and to do any works that were required.

23. The Applicant contended that it had arranged repairs or replacement of the street lights. The Applicant noted that the Respondents had acknowledged that some work had been done to replace old lamps. The Applicant referred to paragraph 22(c) of Chapter 2 of Part 1 of Schedule 1 of the 1983 Act which only required the Applicant to maintain the existing street lighting system and did not oblige it to upgrade the street lighting.

24. 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.

25. The Applicant finally responds to the Respondents' letter by stating the matters raised are similar to those in the statement and by stating that the additional matters are irrelevant.

26. 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. In this case paragraph 19 did not apply because there was no evidence that the increase in the pitch fee included costs which were specifically excluded by that paragraph. Similarly, the Applicant was not including costs of any improvements within the proposed increase. It appears to the Tribunal that the Respondents' case rested on whether there had been a deterioration in the condition of the site. The Respondent did not suggest there had been a reduction in the amenities or services provided.

27. The Respondents make various assertions about deterioration in the condition of the site but failed to back it up with evidence. The impression formed by the Tribunal is that the Respondent was dissatisfied with the current state of the site and would wish improvements to be made. The Tribunal is satisfied that the Respondents have not, either in the statement or in the additional letter, adduced sufficient evidence to displace the presumption that the pitch fee should be increased in line with RPI. The Tribunal is not allowed to take into account the Respondents' financial circumstances and whether their circumstances have been affected by the current public health emergency. The Tribunal, therefore, confirms the increase.

Decision

28. 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 £152.86 with effect from 1 January 2020.

29. The Tribunal is minded to order the Respondents to reimburse the Applicant with the Tribunal application fee of £20. This order will take effect unless the Respondents make representations in writing to the Tribunal on why they should not reimburse the fee by 7 July 2020.