



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

Case Reference : **BIR/17UJ/PHI/2020/0008**

Property : **16 Millfield Park, Old Tupton Road, Chesterfield,
Derbyshire, S42 6AD**

Applicant : **Ms Phoebe Willett**

Representative : **Ms K Apps of Apps Legal Ltd**

Respondents : **Mr and Mrs Henderson**

Type of Application : **Pitch Fee Review**

Tribunal Members : **Judge T N Jackson
Mrs K Bentley**

Date of Decision : **23 July 2020**

DECISION

Decision

We determine that the pitch fee for the Property should increase from the review date of 16th January 2020 from £141.12 per month to £144.08 per month.

Reasons for the Decision

Introduction

1. The Respondents had signed a Written Statement dated 10th January 2015 in relation to the Property which detailed the pitch fee and contained an annual review date of 1st January. The pitch fee was last reviewed on 1st January 2019. On 18th July 2019, a Tribunal determined the pitch fee as £141.12 per month (BIR/17UJ/PHI/2019/0004 – ‘the 2019 Tribunal’).
2. On 1st December 2019, the Applicant gave Notice to the Respondents that she proposed to review the pitch fee from the review date of 1st January 2020. However, as the Notice did not fully explain the proposed increase it was withdrawn. On 12th December 2019, the Applicant served a Pitch Fee Review Notice to take account of the RPI increase of 2.1% (£2.96) and a contribution towards the costs of the road improvements (£5.02). The proposed increase from £141.12 to £149.19 per month was to take effect from 16th January 2020 as a late review.
3. The Respondents did not agree to the proposed increase and wrote to the Applicant on 26th February 2020 setting out their reasons. They did not make an application to the Tribunal.
4. On 9th April 2020, the Applicant applied to the Tribunal for a determination of the new level of pitch fee. The Applicant is now seeking **only** the increase related to the RPI increase, (£2.96), and not a contribution towards the costs of the road improvements.
5. The Applicant also seeks a declaration that the Respondents are in breach of their agreement under the Mobile Homes Act 1983 as they are in arrears of pitch fee totalling £25.12 and seeks an order that the Respondents pay those arrears. The Applicant also seeks an order for costs against the Respondents in the sum of £800 plus VAT and reimbursement of the application fee of £20.

Background

6. At the 2019 Tribunal the Respondents were joint Respondents with other residents of Millfield Park. The joint Respondents raised a range of matters which were considered by the Tribunal. Of particular relevance to the case before us is that the Respondents stated that they were paying a higher pitch fee (£136.61) than the majority of other residents on the Park (£133.62) and therefore their pitch fee should not be increased. They referred to an unsigned letter dated 25th March 2019 stated to be from the Applicant which states that the pitch fee would be ‘£138.03 in the future’.

7. The 2019 Tribunal determined the reviewed pitch fees to be £141.12 for this Property and £138.03 for the other properties on the Park that paid the lower pitch fee. The Respondents sought permission from the Tribunal for leave to appeal and permission was refused. The Respondents did not make an application for leave to appeal to the Upper Tribunal.
8. Despite the 2019 Tribunal determination, the Respondents paid the amount referred to in the letter (£138.03), rather than the amount determined for their Property (£141.12). They therefore incurred ‘arrears’. Following the Pitch Fee Review Notice served in December 2019, the Respondents started to pay £141.12 per month rather than the £144.08 proposed in the Notice for their Property. The figure of £141.12 reflected the proposed increase for other properties on the Park that were paying the lower pitch fee.

The Inspection

9. Neither party requested an inspection. Having regard to the issue in the case and the bundle of documents which included photographs, the Tribunal did not consider it necessary to carry out an inspection.

The Hearing

10. Neither party requested a hearing and we therefore considered the matter on the basis of the written submissions.

The Law

11. The relevant legislation is contained within Schedule 1 Part 1 Chapter 2 of the Mobile Homes Act 1983 (as amended). Paragraph 20 (1) states the presumption that the pitch fee will increase or decrease by a percentage which is no more than the percentage change in the RPI since the last review date.
12. Paragraph 18 sets out factors to which “particular regard” must be had when determining the amount of the new pitch fee. Paragraph 18(1) (aa) refers to “any deterioration in the condition, and any decrease in the amenity, of the Park or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force¹ (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph)”.
13. We can also take account of improvements carried out since the date of the last review (paragraph 18(1)(a)) and also 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 force² (in so far as regard has not previously been had for the purpose of this sub-paragraph) (paragraph 18 (1) (ab)).
14. The decisions in **Wyldecrest Parks Management Ltd v Kenyon and others [2017] UKUT 28 (LC)** and **Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)** both refer to it being possible for us to take into account other factors which are “weighty factors”.

¹ 26th May 2013

² 26th May 2013

15. For the RPI presumption to be displaced under the provisions of paragraph 18, the other considerations must be of considerable weight. “If it were a consideration of equal weight to RPI, then applying the presumption, the scales would tip the balance in favour of RPI”³.

The submissions

16. The Respondents do not dispute the validity of the Notice itself but raise the following issues.

Difference in pitch fees

17. The Respondents continue to say that it is unfair that their pitch fee is higher than other residents on the Park and say that it should be the same.

The letter of 25th March 2019

18. After becoming aware in 2019 that they were paying a higher pitch fee than the majority of residents on the Park, the Respondents raised the matter with the Applicant. They had a phone call with the Applicant following which they received an unsigned letter from the Applicant dated 25th March 2019 which states that the pitch fee would be ‘£138.03 in the future’.
19. . The Respondents submit that on the basis of the letter, their pitch fee in 2019 should have been £138.03. We note that this figure reflects the proposed pitch fee for other residents paying the lower pitch fee on the Park following the Pitch Fee Review Notice in January 2019.
20. The Applicant says that the letter was sent in error. Further, it was sent before her representative had submitted the application to the Tribunal on 29th March 2019 for a determination of the new level of pitch fee. The Applicant had maintained her position that she had asked the Respondents to pay £141.12 per month (the amount sought in the Pitch Fee Review Notice) throughout the 2019 Tribunal proceedings.

The Appellant’s conduct

21. The Respondents refer to allegations of verbal abuse and harassment by the Appellant towards them since April 2019.
22. The Applicant denies the allegations.

The state of repair of the roads

23. In the bundle, the Respondents, as an addendum to a letter dated 26th February 2020 state that ‘the roads are all in disrepair again and flooded in some places’ (page 97). We are unclear as to whether this forms part of the Respondents case that the pitch fee should not be increased by RPI. We will consider it for completeness.

³ Judge Robinson Vyse v Wyldecrest Parks Management Ltd [2017] UKUT 24 (LC)

24. The Applicant adduces evidence that the roads were relaid and improved in December 2018 (page 74) and in April 2019 (page 73) at a total cost of £17,450 (including VAT). The Applicant provides photos of the relaid roads (pages 64-72).
Decision

25. We considered all the written evidence submitted.

26. During the 12- month period applicable to this review, the RPI had risen by 2.1% and this is the increase which the Applicant seeks to apply to the existing pitch fee to determine the new pitch fee.

Different pitch fees

27. As stated clearly in paragraph 43 of the Tribunal Decision of 18th July 2019, we cannot determine whether the pitch fee itself is reasonable and cannot look at other pitch fees to determine whether the pitch fee the subject of this case is reasonable or fair. We must look at the pitch fee agreed at the outset, (or as subsequently reviewed by agreement or Tribunal determination), and then apply the provisions of the 1983 Act as described above.

Letter of 25th March 2019

28. As stated in paragraph 9 of the Tribunal's Decision to refuse to allow permission to appeal to the Upper Tribunal, (page 60) the status and legal implications of the letter are a matter to be resolved between the parties and are not a matter for this Tribunal. The issue is whether the letter can be considered to form a legal agreement between the Applicant and the Respondents. We again suggest the parties seek legal advice on the issue. If the matter cannot be resolved between the parties, then the matter would need to be considered by the County Court.

29. Until that issue is clarified, the Tribunal must determine any pitch review on the basis of the pitch fee agreed at the outset or by Tribunal determination.

30. The Tribunal cannot make a declaration as requested by the Applicant that the Respondents are in breach of their agreement under the Mobile Homes Act 1983 by accruing arrears as it is, as yet, undetermined as to whether there was an agreement for the Respondents to pay £138.03 per month and therefore there may be no 'arrears'.

31. Furthermore, the Tribunal cannot make an order regarding the recovery of arrears. That is outside our jurisdiction and requires debt recovery action in the County Court.

The Appellant's conduct

32. There is no application by the Respondents that the Applicant is in breach of the written Agreement. The Respondents' allegations regarding the Appellant's conduct towards them relate to incidents outside of the mobile home and pitch. Such allegations are therefore not a matter for the Tribunal

State of repair of the roads

33. From the evidence in the Applicant's bundle, we find that the roads were relaid in late 2018 and in 2019. Other than what appears to be a 'passing remark' at the end of a letter, the Respondents have not raised the state of the roads as a matter of concern. The Respondents have not provided any evidence, written or photographic, regarding their assertion that 'the roads are all in disrepair again and flooded in some places'. There is limited evidence that there has been a deterioration in the condition or decrease in the amenity of the Park such as to displace the presumption of an increase in the pitch fee by the RPI Index.

Conclusion

34. We do not find that there has been any measurable deterioration in the condition or decrease in the amenity of the Park in the relevant period. The Respondents' concerns primarily relate to the differential in pitch fees throughout the Park.

35. There have been improvements to the roads in the Park, (although no contribution towards their costs is sought by the Applicant in this pitch review). There has been no assertion of any reduction in the services or the quality of services supplied by the Applicant since the last review.

36. 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 Respondents have provided sufficient evidence to displace that presumption.

37. We determine that the pitch fee for the Property should increase from the late review date of 16th January 2020 in accordance with the Notice dated 11th December 2019 from £141.12 per month to £144.08 per month.

38. The difference between the current pitch fee of £141.12 and the reviewed pitch fee of £144.08 becomes payable 28 days after this decision is issued (paragraph 17 (4)(c) Part 2 of Schedule 1 of the 1983 Act).

Costs

39. The Tribunal may make an order under Rule 13 (1)(b) of the Rules only if a party has acted unreasonably in bringing, defending or conducting the proceedings. As the costs application has been made by the Applicant, the onus of proving unreasonable behaviour rests on them.

40. In assessing whether conduct has been unreasonable we first had regard to the guidance of the Court of Appeal in the case of *Ridehalgh v Horsefield* 1994 3AER 848 when the following definition of unreasonable was given by Sir Thomas Bingham MR:

"Unreasonable means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and reflecting on a practitioner's judgement but it is not unreasonable."

41. The application of Rule 13 was considered by the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 LC*. The correct application of the Rule requires us to adopt the following approach when determining an application for costs:
 - a. Is there a reasonable explanation for the behaviour complained of?
 - b. If not, then as a matter of discretion, should an order for costs be made?
 - c. If an order for costs should be made, what should be the terms of that order?
42. The Applicant applies for legal costs of £800 and reimbursement of the application fee of £20. The application is made on the basis that the Respondents are repeating issues that were addressed by the Tribunal in 2019 and from which decision they did not appeal. The Respondents are alleging the roads are in disrepair despite the Tribunal's findings in 2019 and that the roads were resurfaced in 2019. The Respondents have failed to pay any increase and have chosen not to apply to the Tribunal themselves but have waited for the Applicant to make a further application. The Respondents were advised by the Applicant's solicitor's letter dated 24th February 2020 that if the Applicant had to make a further application to the Tribunal the Applicant would seek her legal costs against them.
43. The Applicant submits that the Respondents appear not to have accepted aspects of the previous Tribunal's decision but have not pursued any appeal or separate application themselves. The Applicant's solicitor submits that they are taking an unreasonable stance. The Respondents failure to apply to the Tribunal regarding the amount of pitch fee has required the Applicant to do so as failure to do so would allow the Respondents to continue to pay £141.12 per month.
44. The Respondents have been consistent from prior to the 2019 Tribunal that they should not be required to pay a higher pitch fee than the majority of the other residents on the Park and rely on the 25th March 2019 letter. The Respondents say they are relying on legal advice from a park homes solicitor who, they say, has advised them to pay a pitch fee based on the 25th March 2019 letter. We have not been provided with any correspondence from such a solicitor (although a solicitor is named in the papers) and the Respondents are unrepresented in these proceedings.
45. Whilst we accept that the Respondents are raising matters previously considered by the Tribunal in 2019, the issue of the status of the letter and whether it comprised an agreement between the parties was not determined by the Tribunal. In the application for permission for leave to appeal the Tribunal advised that this was a matter that needed to be resolved between the parties and upon which the Respondents may wish to seek legal advice.
46. We do not accept that the Respondents have acted unreasonably. They purport to be acting on legal advice. We are not clear whether the solicitor concerned has been provided with a full and accurate account of the matter and/or whether any advice provided has been correctly understood by the Respondents. However, their conduct has a reasonable explanation. We do not award costs against the Respondents.
47. We again strongly advise the parties to resolve the matter of the status of the letter of 25th March 2019, either by agreement, (preferably through legal advisers to ensure clarity) or, if required, by application to the County Court. Until it is resolved it is likely that there will need to be applications to the Tribunal whenever there is a proposal to increase the pitch fee. A Tribunal will not resolve the issue of the status of

the letter as it can only look at the last pitch review as agreed between the parties or determined by the Tribunal. It is therefore in each parties' interests to have the matter resolved. In any future applications for costs it is likely that, when considering whether a party has acted unreasonably, a Tribunal would consider the steps taken by each party in an attempt to resolve the issue of the status of the letter of 25th March 2019.

Appeal

48. If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson