FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: BIR/41UG/PHI/2020/0001-0006**
Property	**: 1, 3,4,5,6 and 8 Castle Grange Park, Doxey, Stafford, ST16 1HQ**
Applicant	**: Mrs Ann Marie Evans (Site Owner)**
Representative	**: David Sunderland c/o/Wyldecrest Parks**
Respondents	**: Mr and Mrs Law (No. 1)** **Mr and Mrs Howarth (No. 3)** **Mrs Jean Bailey (No. 4)** **Mrs and Mrs Taylor (No. 5)** **Mrs Luttjebor (No. 6)** **Mrs Hunt (No. 8)**
Type of Application	**: Application under Mobile Homes Act 1983 Schedule 1 Part 1 paras 16-20** **Application for determination of the new level of pitch fee**
Tribunal Members	**: Judge T N Jackson** **Mr P Cammidge**
Date of Decision	**: 27 July 2020**

DECISION

Decision

We determine that the pitch fee for the Properties should increase from the review date of 1st January 2020 from £128.92 per month to £131.63 per month.

Introduction

1. Each Respondent had signed a Written Statement in relation to the respective Properties described above which detailed the pitch fee and contained an annual review date of 1st January.

2. The Applicant served a Pitch Fee Review Notice dated 28th November 2019 on each of the Respondents. It proposed to increase the pitch fee to take account of the RPI increase of 2.1%. The proposed increase from £128.92 to £131.63 per month was to take effect from 1st January 2020.

3. The Respondents did not agree to the proposed increase. On 3rd December 2019, the Chairman of the Castle Grange Park Residents Association, Mr Howarth, (No. 3) wrote on behalf of the residents to the Applicant and Mr Evans setting out their reasons. They had been advised by IPHAS that until the road was resurfaced to a satisfactory standard and lighting provided that they had a right to withhold the increase in pitch fee. The Respondents did not make an application to the Tribunal.

4. The Applicant applied under Schedule 1, Part 1 para 16 of the Mobile Homes Act 1983 ('the 1983 Act') for determination of the new level of pitch fee payable for the Properties. The Applicant also applies for an order against each of the Respondents of costs of £165 and reimbursement of the application fee of £20.

5. Directions were issued on 2nd March, 21st April, 10th June and 1st July 2020.

The Inspection

6. The Respondents requested an inspection. Due to the Covid 19 pandemic ,on 19th March 2020, the Senior President of Tribunals issued the Pilot Practice Direction: Contingency Arrangements in the First Tier Tribunals and the Upper Tribunal. As a consequence, we did not carry out an inspection. Having regard to the particular issue in the case and the bundle of documents which included photographs, we considered that we could deal with the case fairly and justly on the basis of the bundle and did not consider it necessary to carry out a 'drive by' inspection.

Background

7. Under a Site Licence dated 6th February 2013, the Applicant was granted a Licence for Castle Grange Park, ('the Park') for a maximum of 12 mobile homes. The Park is accessed from Doxey Road via an unadopted road which is not part of the licensed site ('the Access Way'). The Access Way forms the only access to the Park and also serves a residential development adjacent to the Park.

8. The residents of the Park have had an ongoing concern from at least 2012 regarding the condition of the Access Way.

9. In his capacity as Chairman of the Residents Association, Mr Haworth, (Respondent 3) raised the issue of the condition of the Access Way, (and other matters), by letter with the Applicant and Mr J Evans on 7th October 2012; a local MP on 29th January 2013 and 28th January 2014 and to a local Councillor of Stafford Borough Council, on 29th January 2013 and 4th February 2014.

10. On 18th February 2014, Mr Haworth wrote to the Applicant and Mr J Evans (who they refer to as the Applicant's husband) expressing concern regarding the disrepair of the Access Way.

11. On 28th February 2014, an Environmental Health Officer from Stafford Borough Council visited the Park and had a subsequent meeting with the Applicant and Mr Evans. On 4th March 2014 the Council Officer responded to Mr Haworth and referred to the need to seek advice from planning officers regarding the enforcement of historic planning conditions relating to the adjacent residential development, (which it is claimed required the resurfacing of the Access Way). The officer also referred to the residents seeking advice from Stafford County Council regarding provisions of the Highways Act 1980 which require owners of roads to carry out repairs.

12. In correspondence with the Applicant and Mr J Evans dated 25th October 2019 regarding the Access Way, the Respondents refer to residents being likely to damage their cars and pedestrians to trip and fall. They say it is not a suitable road for the elderly to walk along especially after dark as there is no lighting.

13. The Respondents refer to conversations with Mr Evans regarding the Access Way. The Respondents say both that Mr Evans and the Applicant own the Access Way and also that it is owned solely by Mr Evans. The Respondents send correspondence regarding issues in the Park and the Access Way jointly to the Applicant and Mr Evans. The Respondents appear to be under the assumption that both the Applicant and Mr Evans own the Park.

The Hearing

14. Neither party requested a hearing and we therefore considered the matter on the basis of the written submissions provided by the parties. The Respondents provided a joint submission.

The Law

15. 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.

16. 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** [our emphasis] since the date on which this paragraph came into force[1] (in so far as regard has not previously been had to that deterioration or decrease for the purpose of this sub paragraph)".

[1] 26th May 2013

17. We can also take account of improvements to the site (paragraph 18(1)(a)) and also any reduction/deterioration in the quality of services supplied by the owner (paragraph 18 (1) (ab). These paragraphs are of no relevance to this case.

18. 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".

19. 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"[2].

The submissions

The Respondents

20. The Respondents do not dispute the validity of the Notice itself nor the rate of RPI percentage increase. They submit that the Access Way is in a dangerous condition. They say that there has been a deterioration in the condition of land adjoining the Park owned or controlled by the Applicant, (namely the Access Way), and that should therefore be taken into account under paragraph 18 (1) (aa) of the 1983 Act.

21. The Respondents say that the Access Way is owned by the Applicant and Mr Evans and suggest that Mr Evans also has a role in the ownership/operation of the Park.

The Applicant

22. The Applicant's representative submits that the Access Way is not owned, occupied or controlled by the Applicant. He says that the Access Way is privately owned and affords access not only to the Park but also to several residential properties.

23. Following Directions, the Applicant's representative provided a copy of the Land Registry title documentation for the Park. The Applicant owns the Park but the Access Way is not included within the Applicant's title.

24. Clause 13.2 states that the Applicant has the following rights:

> '(a) *In so far as the Transferors are entitled to do so a right of way in common with the Transferors and all others sharing a like right at all times for all reasonable purposes connected with the lawful user of the property on foot with or without motor vehicles and light commercial vehicles or any other vehicles which require access in connection with operating of the Buyer's business over the Access Way which roadway is not included in the Property but gives access to it, subject to the contribution towards the maintenance of the Access Way hereinafter covenanted to be paid by the Transferee'.*

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

25. Clause 14.4.2 states that the Applicant covenants with the Transferee and their successors in title to the Retained land:

> '(c) *to pay to the Transferor on demand a contribution amounting to 15/19ths of the cost to the Transferor or their successors in title of repair and maintenance of the Access Way and it is hereby agreed and declared for the removal of doubt that in the event the Transferor decides to widen the Access Way unless otherwise subsequently agreed between the parties hereto that the Transferee shall not be liable to make any contribution towards any widening of the Access Way'.*

26. The Applicant's representative states that there has been no maintenance of the Access Way carried out under the covenant since the purchase of the Park in 2001.

Deliberations

27. The preliminary issue before us is quite simple-does the Applicant **own, occupy or control** the Access Way which is land adjoining the Park. If she does not, the provisions of section 18(1) (aa) do not apply.

28. Land Registry documentation identifies the Applicant **only** as the legal owner of the Park.

29. Under the title to the Park the Applicant does not own the Access Way but has a right of way over it which is subject to a covenant to make a contribution towards its maintenance. We do not consider that the right of way constitutes 'occupation or control' as required by paragraph 18 (1) (aa). We consider that those words suggest exclusivity and a right of determination which the right of way does not provide.

30. The Respondents have not produced any evidence that the Applicant owns, occupies or controls the Access Way. It is suggested that Mr Evans owns the Access Way e.g. in the Council officer's letter of 4th March 2014 and from reports by the Respondents of conversations with Mr Evans in which he is alleged to have stated the likely cost of repairing the Access Way and in which he described the arrangements he had made regarding the liability for the cost of maintenance of the Access Way. However, it is irrelevant that the Access Way may (or may not) be owned by a member of the Applicant's family. Such a link would not constitute 'occupation or control' by the Applicant which is the question we need to address.

31. As we have determined that the Applicant does not own, occupy or control the Access Way, we do not need to go on to consider whether there has been a deterioration in the condition or a decrease in the amenity of the Access Way.

Conclusion

32. We accept the presumption that the pitch fee should be increased in line with the increase in RPI index over the relevant period. We are not satisfied that the Respondents have provided sufficient evidence to displace that presumption.

33. We determine that the pitch fee for the Properties should increase, in accordance with the Notice dated 28th November 2019, from £128.92 per month to £131.63 per month from the review date of 1st January 2020.

34. If the Respondents have continued to pay the original pitch fee since that date, they must pay the difference to the Applicant.

35. We are not clear whether the Applicant has issued letters to the Respondents regarding arrears of pitch fees arising from the proposed increase. We confirm that the Respondents are not in arrears if they have continued to pay the pitch fee due before the service of the Notice of increase. The difference between the current pitch fee and the reviewed pitch fee becomes payable 28 days after this decision is issued (paragraph 17 (4)(c) Part 2 of Schedule 1 of the 1983 Act).

Costs

36. The Applicant applies for an order against each of the Respondents of costs of £165 and reimbursement of the application fee of £20.

37. The Tribunal may make an order under Rule 13 (1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 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 her. The Tribunal may make an order under Rule 13(2) of the Rules requiring a party to reimburse to the other party an application fee.

38. 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."

39. 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:

    i. Is there a reasonable explanation for the behaviour complained of?
    ii. If not, then as a matter of discretion, should an order for costs be made?
    iii. If an order for costs should be made, what should be the terms of that order?

40. The Applicant's representative submits that the Respondents were warned of a potential costs application in a letter drafted in identical terms sent to each of the Respondents on various different dates between 9th December 2019 and 20th January 2020. The letter states:

> 'As you have provided no valid reason to date we would consider your refusal to agree to the review as unreasonable and make an application for payment of my fees and costs of bringing the application'

41. The letter urges the Respondents to reconsider their position and agree the review and take legal advice or the Applicant will have no option other than to make a Tribunal application.

42. The letter further states:

> 'In terms of your enquiry about the access road, this is unrelated to a pitch review and is not in any event part of Castle Grange Park. Refusing to agree the pitch fee proposal to try to obtain improvements to a road outside the park is a breach of process and unreasonable'.

43. We do not find that the Respondents have acted unreasonably in defending the proceedings. We suggest that, in the absence of any evidence to the contrary, it is reasonable for the Respondents to assume that the Applicant has some legal interest in the Access Way as that is the only access to the Park. The condition of the Access Way has been at issue for several years. We have seen no evidence that during that time either the Applicant or her representative have taken steps to ensure that the Respondents clearly understand the legal basis on which the Applicant, (and therefore the Park residents) is able to use the Access Way. Indeed, it required two sets of Directions with very direct questions for the Tribunal itself to be informed of the legal basis.

44. At paragraph 13 of his Statement of Case, the Applicant's representative says that the letter referred to in paragraphs 40-42 above informed the Respondents that the Applicant did not own the Access Way. With respect, it does not. It merely says that it is not part of the Park. In theory the Applicant could own, occupy or control the Access Way as a separate piece of land under a separate title. It was clear from correspondence from Mr Haworth in his capacity as Chairman that the reason for the failure to agree the pitch review increase was the condition of the Access Way. A clear description by the Applicant or her representative to the Respondents of the respective legal interests in the Park and the Access Way, (including the Applicant's right of way), at any time from the beginning of the Respondents' concerns about its condition in 2012 up until the letters referred to in paragraphs 40-42 may have prevented the need for any applications to the Tribunal.

45. For those reasons we do not make an order for costs or for reimbursement of the fees.

Appeal

46. 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.

Judge T N Jackson