



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/12UD/PHI/2019/0013**

Site : **Osborne Park,
Osborne Road,
Wisbech,
PE13 3JY**

Park Home address : **4 Osborne Park**

Applicant : **Tingdene Parks Ltd**

Respondent : **Gary Barrell**

Date of Application : **18th June 2019**

Type of application : **to determine pitch fee for the
address**

The Tribunal : **Tribunal Judge S Evans**

DECISION

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1. The Tribunal determines that the annual pitch fee for the pitch known as 4 Osborne Park as from 1st April 2019 is £1,645.20.

Reasons

Introduction

2. The Respondent is the occupier of the park home known as 4 Osborne Park placed on the pitch forming part of the Applicant's park home site at Wisbech and he has not agreed to an increase in pitch fees for 2019 in line with the Retail Prices Index ("RPI"). The site owner must therefore apply to this Tribunal if it is to obtain an increase in pitch fee. There does not appear to be any dispute that the annual review date for pitch fees is on 1st April, as the written occupancy agreement provides.
3. On the 29th January 2019, a letter was written to the Respondent, explaining that following a pitch fee review, as from the 1st April 2019 the pitch fee would be increased in line with RPI i.e. 2.7% in accordance with the Office for National Statistics figures produced at page 38 in the bundle supplied to the Tribunal for this determination.
4. The Tribunal issued a directions Order on the 23rd July 2019 ordering the Respondent to file and serve any statement of case. None has been

received which argues that the pitch fee should not be increased in line with the RPI. The Order also said that the Tribunal was content to deal with this matter by considering the papers only, to include any representations from the parties, and would do so on or after 8th October 2019 unless any party requested by 10th September 2019 an oral hearing which would then be arranged. No such request was received.

5. The Applicant has filed a statement from Kerry Wild dated 20th August 2019 which the Tribunal has noted.

The Occupation Agreement

6. A copy of such agreement has been produced which seems to comply in all material respects with those terms imposed by the Mobile Homes Act 1983 (“the 1983 Act”) as it was. The only material amendments since have been to give this Tribunal, rather than the court, jurisdiction to deal with the approval of pitch fees if agreement cannot be reached.
7. The express and Statutory terms are intended to provide protection to park home owners because the site owner is perceived to have the ‘upper hand’ in an unequal negotiating position. As far as pitch fees are concerned, the provisions are quite straightforward. The initial pitch fee is negotiated between the parties and the site owner can only increase the pitch fee annually with the agreement of the occupier or with the permission of this Tribunal.
8. There can be an annual review of the pitch fee. If there is, notice then has to be given to the occupier of the result of that review within certain time constraints set out in the agreement prior to the ‘review date’. Now, certain statutory information has to be served on the occupier in addition to the notification of the result of the pitch fee review. The Tribunal agrees that the statutory information has been given and the relevant time limits have been complied with in this case. The notice of proposed new pitch fee dated 29th January 2019 complies with The Mobile Homes (Pitch fees)(Prescribed Form)(England) Regulations SI 2013/1505, because it is in a form substantially to like effect as the prescribed form in the Schedule to the Regulations.
9. As to the pitch fee set out in the agreement, this is a contractual matter. This Tribunal has no power to interfere with what was agreed. Unlike the jurisdiction of this Tribunal to assess fair and open market rents, there is no suggestion in either the agreement or the 1983 Act that the Tribunal starts a fresh consideration of the open market position with regard to pitch fees either on the same site or other sites.

The issue

10. As to the amount of any increase or decrease in the pitch fee, the starting point is that regard shall be had to the RPI. Schedule 1, Chapter 2, paragraph 18 of the 1983 Act, which overrides the express provisions, goes further than this by saying that there is a presumption that the pitch fee will change with the RPI.

11. Upon application, the Tribunal has to determine 2 things. Firstly that a change in the pitch fee is reasonable and, if so, it has to determine the new pitch fee. There is no requirement to find that the level of the pitch fee is reasonable.
12. There are other matters which may be taken into account, depending on the circumstances, i.e. monies spent on the site by the site owner, whether there has been a reduction in the 'amenity' of the site since the last increase and any other statutory requirement. None is relevant to this application save for the issue of the site licence fee – see below.

Site Inspection

13. As no-one had raised any issues which required an inspection of the site or the pitch, none was arranged in this case.

Conclusions

14. As to whether a change in the pitch fee is reasonable, the Tribunal is conscious of the wording of the 1983 Act as mentioned above i.e. that the starting point is a change in line with the RPI. Where, as in this case, there has been a change in RPI, one is almost bound to conclude that a change is reasonable. The Tribunal does so find in this case.
15. There does not seem to be any dispute that the formalities imposed by the 1983 Act as to the undertaking of a pitch fee review, the service of notice of increase plus statutory information and the time limits for the application to this Tribunal have been complied with. Thus the Tribunal accepts that they have all been complied with.
16. As to the figure itself, the RPI for December 2018 was published on 16th January 2019 at 285.6, and was the latest index before the notice was served by the Applicant, for the purposes of para. 20(A1)(a) and (A2) of Schedule 1, Chapter 2 to the Mobile Homes Act 1983. The RPI for 12 months before, in December 2017, for the purposes of para 20(A1)(b), was 278.1.
17. Therefore the Tribunal confirms the increase is $(285.6/278.1) \times £1602 = £1645.20$, namely a 2.7% increase as the Applicant has indicated.
18. The Tribunal concludes that the pitch fees shall be increased in accordance with RPI as from 1st April 2019 as set out in the decision above.

Judge:

S J Evans

Date: 16/10/19

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.