FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HE/PHI/2020/0002
Property	**:**	15 Trenance Holiday Park Edgcumbe Avenue Newquay Cornwall TR7 2JY
Applicant	**:**	Paul Hoyte
Representative	**:**	Mrs Claire Mitchell BSc(Hons)MRICS FAAV, Rural Surveyor
Respondent	**:**	Mrs Mitchell
Representative	**:**	
Type of Application	**:**	Review of Pitch Fee
Tribunal Member(s)	**:**	Judge Tildesley OBE
Date and venue of Hearing	**:**	Determination on the Papers
Date of Decision	**:**	10 August 2020

DECISION

Summary of the Decision

The Tribunal decides that the Applicant's failure to comply with the correct procedures for initiating a review of the pitch fee is fatal to his application. The Tribunal determines that the Respondent is not liable to pay an increase in the pitch fee from 1 January 2020.

Background

1. The Applicant proposed a new pitch fee of £87 per month as from 1 January 2020 in respect of the mobile home at 15 Trenance Holiday Park. As the new pitch fee has not been agreed by the Occupier the Applicant has applied to the Tribunal for a determination as to the level of the new pitch fee in respect of the pitch at 15 Trenance Holiday Park.

2. The pitch fee review notice was dated 30 November 2019 which was sent more than 28 days before the review date of 1 January 2020. The Application was received on 6 March 2020 within 3 months of the review date.

3. The determination of the application has been delayed because of the Coronavirus Pandemic.

4. On 26 June 2020 the Tribunal directed the Application to be dealt with on the papers unless a party objected within 14 days. No objections have been received. The Tribunal also required the parties to exchange their statements of case. The Tribunal indicated that it would publish its decision by 10 August 2020.

Consideration
Factual and Legislative Context

5. 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.

6. Trenance Holiday Park is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act). The Park includes a residential area of 52 park homes. The Park is within walking distance of Newquay Town Centre. The Park was established in the 1950's by the Hoyte Family who still run the Park.

7. The Respondent's right to station her mobile home on the pitch at Trenance Park is governed by the terms of the Written Agreement with the Applicant and the provisions of the 1983 Act.

8. The written agreement commenced on 14 February 2000 and was assigned to the Respondent on 29 December 2015.

9. Under express clause 3(a) of the agreement the Respondent is obliged to pay to the Applicant an annual pitch fee by equal

monthly payments in advance on the first day of each month which is subject to review by 1 January every year.

10. The agreement is subject to the implied terms set out in Chapter 2 Part 1 of Schedule 1 of the 1983 Act.

11. Under paragraph 17(2) Chapter 2 Part 1 of Schedule 1 of the 1983 Act the owner of the site is required to serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

12. Paragraph 17(2A) states that a Notice given under paragraph 17(2) is of no effect unless it is accompanied by a document which complies with paragraph 25A.

13. Paragraph 25A states that the document referred to in paragraph 17 (2A) must

> (a) be in such form as the Secretary of State may by regulations prescribe,
>
> (b) specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1)
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> (c) explain the effect of paragraph 17,
>
> (d) specify the matters to which the amount proposed for the new pitch fee is attributable,
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> (e) refer to the occupier's obligations in paragraphs 21(c) to (e)and the owner's obligations in paragraphs 22 (c) to (d), and
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> (f) refer to the owner's obligations in paragraphs 22(e) and (f) (as glossed by paragraphs 24 and 25).

14. On 30 November 2019 the Applicant served upon the Respondent the prescribed "Pitch Fee Review Form" under paragraph 25A(1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983. It does not appear that the Applicant served a Notice under section 17(2).

15. Under section 2 of the Prescribed Form entitled *"Proposed New Pitch Fee"*, the Applicant completed the following details: Last Review date: 1 January 2019; The Current Pitch Fee is £84.; The Proposed New Pitch Fee is £87.

16. Under section 3 entitled *"Date New Pitch Fee Proposed To Take Effect",* the Applicant completed the second bullet point namely: The Proposed Pitch Fee will take effect on 1 January 2020 *which is later than the review date.* The first bullet point stated that the proposed pitch fee will take effect on the review date on… .

17. Under section 4 entitled *"Calculation of the Proposed New Pitch Fee"* which stated that the new pitch fee has been calculated as (A) + (B) +(C) – (D). Under (A) the current pitch fee was stated as £84. Under (B) the Applicant put the RPI adjustment £3.00+ calculated from a percentage increase/decrease of 1.5 per cent (the Applicant did not delete the relevant part of increase/decrease). (C) and (D) were left blank.

18. Section 4 then goes into further details on the RPI adjustment which was completed by the Applicant as follows:

> "(B) The RPI adjustment In accordance with paragraph 20(A1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983, I/we have calculated the RPI adjustment as the percentage increase/decrease [delete as appropriate] in the Retail Prices Index (RPI) over 12 months by reference to the RPI published for October 2019 [insert month and year of latest index]which was 1.5% [insert RPI for that month].
>
> Note: For further information on the correct RPI figures to use refer to the section on the RPI adjustment in the notes at the end of this form".

19. The form was signed by the Applicant and dated 30 November 2019.

The Parties Submissions

20. On 28 June 2020 the Mrs C Mitchell for the Applicant set out the Applicant's statement of case:

> "Mr P A Hoyte on behalf of A W & P A Hoyte served at Pitch Fee Review Form to all 52 residents on 30th November 2019, being the requisite 28 days notice required under the Act for any pitch fee review. The prescribed form was used, a copy has already been provided to the Tribunal. This sets out the current and proposed pitch fees with the effective date, being in this case 1st January 2020.
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> The fee increase calculation was carried out in accordance with both the lease agreement (evidence of this and assignment details have been provided to the Tribunal) and the Mobile Homes Act 1983. This was calculated using the October 2019 Retail Price Index (RPI) being 2.1% however in error, the figure of has been used 1.5% (evidence of this has been provided to the Tribunal).
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> The total increase of £3 pcm has been calculated as above in accordance with the RPI and also with consideration towards the water rates, to which the occupiers, at present do not contribute towards. It is clear that with the rise in water rates over the last few years along with high consumption by the residents that this is becoming unsustainable for the owners to support and a nominal increase should be passed across to the occupiers in the annual pitch fee review. Therefore of the £3 pcm increase, £1.26 is attributable to the incorrect 1.5% RPI and a modest £1.74 covers water charges.

Indeed, it is clear from average consumption rates when the park is only open to residents that the water charges should be in excess of £50pcm per occupier, however the owner has considered this too high a charge initially and intends to recover the costs through a low level annual increase as calculated.

If the actual 2.1% RPI was used, the increase would be £1.76 alongside a water rates nominal contribution of £1.24.

Of the £3 pcm increase, all residents apart from the Respondent and one other have automatically paid with no problem, indeed, the Respondent last year agreed and paid to a similar increase.

Finally, the Applicant draws the Tribunal's attention to comparable pitch fees within the local area, namely within a 3 mile radius which range from £135-£150 pcm for the pitch only with all water, electric and gas etc charged on top. We therefore consider the £87 pitch fee payable extremely low for a park in a better, more central location".

21. On 30 June 2020 the Applicant supplied evidence of the RPI increase for the said period which should have been 2.1 per cent rather than 1.5 per cent as stated in the Pitch Review Form Notice.

22. On the 19 July 2020 Respondent provided the following response:

"In past years, the pitch fee increase included the Retail Price Index (RPI) and rounded UP to the next pound. This year, the arbitrary increase over RPI was greater. I did not pay the increase.

I attach for your reference the receipt for my pitch fee payment to August 2020 at £84 a month. The receipt also shows the email address for the park. The Applicant is the owner of the park. It is the only email address I have for the Applicant.

I also attach for your reference the Pitch Fee Review Form (PFRF) I received, dated 30th November 2019. My comments are as follows :-

1. I received the PFRF 28 clear days before the review date of 1st January 2020.

2. Yes, last years monthly pitch fee was £84.

3. 1.5% (RPI) of £84 is not £87.

4. As usual, the proposed increase greater than the RPI is not detailed in the PFRF.

5. I was not consulted regarding the proposed increase greater than the RPI.

It is my assertion that the Applicant did not serve me with a notice of proposed increase of pitch fee in the form required by

paragraphs 17 and 25 of the Implied Terms set out in chapter 2 of part 1 of schedule 1 to the Mobile Home Act 1983.

I would also like to politely mention a Tribunal Determination (of pitch fee) by A M Davies, LLB and P Mountain, FRICS dated 17th June 2019. Case Ref:- MAN/00EQ/PHI/2019/0002".

23. On the 24 July 2020 Mrs C Mitchell for the Applicant replied to the Respondent's case pointing out that the Park is a mixed residential and holiday park which has remained closed to holiday makers since 1 October 2019. Mrs Mitchell confirmed that Pitch Review Notice was served and completed correctly in accordance with the relevant statute.

Reasons

24. The central issues in this case are whether the Applicant followed the correct procedures for the review of pitch fees, and if the Applicant did not the consequences of the failure to comply with those procedures.

25. It is accepted that the Applicant sent the Respondent a Pitch Fee Review Form as required by paragraph 17(2A) and that the Applicant used the prescribed form as specified in paragraph 25A(a). Further the Applicant provided the Respondent with the Pitch Review Form on 30 November 2019 which was at least 28 clear days before the date of review on 1 January 2020.

26. The Tribunal, however, finds that the Applicant did not comply with the following aspects of the procedure for reviews of pitch fees:

a) The Applicant did not serve a written notice setting out his proposals for the new pitch fee in accordance with paragraph 17(2). This is not the same as the paragraph 25A Pitch Fee Review Form. The latter is to accompany the paragraph 17(2) Notice. It appears to the Tribunal that the Applicant has assumed that the paragraph 25A Pitch Fee Review Form is the paragraph 17(2) Notice. It is not. The Act envisages that the owner serves two separate documents: a paragraph 17(2) Notice of Increase and a paragraph 25A Pitch Review Form.

b) The Applicant did not complete the correct part of section 3 of the paragraph 25A pitch review form. He completed the second bullet point rather than the first bullet point.

c) In section 4 of the paragraph 25A pitch review form the Applicant did not give the correct RPI percentage increase. It should have been 2.1 per cent rather than 1.5 per cent. Also the Applicant failed to delete as appropriate whether the percentage given was an increase or decrease in RPI.

d) The Applicant did not fill out (C) and (D) of section 4. (C) dealt with recoverable costs over and above the RPI increase the Applicant was intending to recover through the new pitch fee. (D) was concerned with relevant deductions.

e) The Applicant should have completed (C) because the proposed £3 increase included an element for water charges.

27. The Tribunal recognizes that some of the errors committed by the Applicant could be reasonably described as typographical errors: the wrong bullet point in section 3 and the oversight in respect of whether the RPI figure given represented an increase or decrease.

28. The Tribunal, however, considers the errors in respect of the wrong RPI figure and the omission of the amount attributable to water charges in a different light. The effect of these two errors is that the Respondent was not able to ascertain from the paragraph 25A pitch review form served how the increase in the pitch fee had been calculated.

29. The Upper Tribunal in *Shaw's Trailer Park (Harrogate) v Mr P Sherwood and others* [2015] UKUT 194 (LC) considered the legal consequences of the failure by a site owner to serve a correctly completed paragraph 25A pitch fee review form on an occupier. In this case the only error was that the owner put down the wrong percentage figure for the RPI increase. The Upper Tribunal concluded that the failure to correctly calculate the RPI adjustment was fatal, and the First-tier Tribunal had not erred in holding that the notice was void. The Upper Tribunal's reasoning is set out in [31] – [36] of its decision:

> 31. The first notice proposed an increase in the pitch fee which was based on an incorrect RPI figure (i.e. one which was not in accordance with paragraph 20(A1)). The first issue is whether the FTT was right to find that, as a result of this error, the first notice was of no effect.
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> 32. In its recent decision in *Natt v Osman* [2014] EWCA Civ 1520, which concerned the validity of a notice under s. 13 of the Leasehold Reform, Housing and Urban Development Act 1993, the Court of Appeal considered the modern approach to the consequences of non- compliance with the process or procedure laid down by a statute for the exercise or acquisition of some right in relation to property conferred by that statute. The Chancellor, with whom Lord Justice Patten and Lady Justice Gloster agreed, emphasised that the proper approach in such cases (in contrast to cases involving challenges to the decisions of public bodies, or compliance with procedural rules in litigation) is not to ask whether there had been substantial compliance or to consider

the particular circumstances of the recipient of the notice or the degree of prejudice which may or may not have been caused by the non-compliance. On the contrary (at [31]):

> "The Court of Appeal cases show a consistent approach in relation to statutory requirements to serve a notice as part of the process for a private person to acquire or resist the acquisition of property or similar rights conferred by the statute. In none of them has the court adopted the approach of "substantial compliance" as in the first category of cases. The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the Court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid."

33. This stricter approach has the great advantage of certainty in relation to property rights. It seems to me to be applicable to the procedures, statutory in origin, for initiating a review of pitch fees under agreements to which the 1983 Act applies. Perhaps more importantly, paragraph 17(6A) of Chapter 2 of Part 1 of Schedule 1 to the Act is explicit in prescribing that a notice which proposes an increase in the pitch fee "is of no effect unless it is accompanied by a document which complies with paragraph 25A". That express statement of the consequences of non-compliance removes any doubt, and leaves no room for considerations of whether any prejudice has been suffered as a result of the non-compliance. The only relevant question is therefore whether the first review form complied with paragraph 25A.

34. Paragraph 25A(1)(b) requires that the notice must "specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1)" and it is agreed that the notice failed to do so. The percentage increase in RPI which was specified was not calculated in the required manner. Mr Kelly submitted on behalf of the appellant that the first notice was nevertheless compliant with paragraph 20(A1) because it would have been obvious to any reasonable recipient of the notice who considered its contents that the information contained in it was incorrect, and that the document should be construed as the recipient would have understood it to have been intended. He did not suggest that the recipient of the notice should be assumed to have the correct RPI figures immediately in mind but rather that they would readily be able to ascertain the appropriate RPI increase, as Mr Sherwood haddone, because the prescribed form identified precisely how the that was to be done. Mr Kelly argued that this approach was in accordance with the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749. That decision

> concerned the proper construction of contractual notices containing an obvious error; if notwithstanding a defect in its form, a reasonable recipient of such a notice would have been left in no doubt what it was intended to achieve, the notice would be valid.
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> 35. I cannot accept Mr Kelly's argument, which in my judgment finds no support in *Mannai*. The error in the first notice was not obvious, and indeed the figure was quite close to being accurate. The sort of research which Mr Kelly postulated is exactly the sort of research which the recipient of the notice would assume the giver of the notice had already carried out. The recipient was entitled to assume that the information contained in the form was accurate, except where it was obvious that an error has been made. In this case it was not obvious that there had been an error, nor what the correct figure ought to have been.
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> 36. On this aspect of the appeal I am quite sure that the FTT was correct in finding that the first attempt to initiate the pitch fee review was of no effect. Although the notice and accompanying document were only a proposal, and could not give rise to a new pitch fee unless and until the proposal was agreed, the failure to calculate the RPI adjustment using the method prescribed in para 25A was fatal".

Decision

30. The Tribunal finds that the Applicant has not followed the correct procedures for initiating a review of the pitch fee in respect of 15 Trenance Holiday Park. The Applicant did not serve a separate notice under paragraph 17 (2) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act. The Applicant supplied the Respondent with an incorrect paragraph 25A Pitch Review Form which amongst other errors did not specify the correct percentage for RPI and did not include details of the proposed water charges. The effect of these errors was that the Respondent did not know how the proposed increase of £3 had been calculated.

31. The Tribunal decides that the Applicant's failure to comply with the correct procedures for initiating a review of the pitch fee is fatal to his application. The Tribunal determines that the Respondent is not liable to pay an increase in the pitch fee from 1 January 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 rpsouthern@justice.gov.uk.

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.