



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

Case References : **BIR/44UE/PHI/2020/0025**

HMCTS : **P: PAPERREMOTE**

Property : **49A Oversley Mill Park, Oversley Green,
Alcester, Warwickshire, B49 6LL**

Applicant : **Mrs Loveridge**

Representative : **SME Solicitors**

Respondents : **Mr and Mrs Genders**

Type of Application : **Application by site owner for a
determination of a new level of pitch
fee, under paragraph 16 of Chapter 2 of
Part 1 of Schedule 1 to the Mobile
Homes Act 1983**

Tribunal Members : **Judge M K Gandham
Mrs S Hopkins FRICS**

Date of Decision : **7 December 2020**

DECISION

Decision

1. The Tribunal determines that the pitch fee for the property known as 49A Oversley Mill Park, Oversley Green, Alcester, Warwickshire, B49 6LL ('the Property') shall be increased from £128.23 per month to £131.69 per annum, from 1st April 2020.

Reasons for Decision

Introduction

2. On 1st March 2020, Mrs Lesa Loveridge ('the Applicant') served a notice ('the Notice') on Mr Neil Genders and Mrs Rosemary Genders ('the Respondents') detailing a proposed increase in the pitch fee for the Property. The increase was to take effect from 1st April 2020. As the Respondent failed to pay the increased pitch fee, the Applicant applied to the Tribunal, by an application received by the Tribunal on 30th June 2020, for a determination of the new pitch fee under paragraph 17(4)(a) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended) ('the Act').
3. On 4th August 2020, the Tribunal issued a directions order, in which it confirmed that the Applicant's application form and accompanying documents would stand as the Applicant's Statement of Case. In accordance with the directions order, the Tribunal received a Response (with various enclosures) from the Respondents and a Reply to the Respondents' Response, from the Applicant.
4. An inspection of the Property by the Tribunal took place on 30th October 2020. Following the inspection, the Respondents emailed two further photographs for the Tribunal's consideration.
5. As neither party requested an oral hearing, the Tribunal determined the matter in issue on the papers submitted.

The Law

6. The relevant law in relation to the application is set out in Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended), in particular, paragraphs 16 to 20 inclusive and paragraph 25A. Subsequent references in this decision to paragraphs 16 to 20 and paragraph 25A are references to this Chapter of this Schedule. The relevant provisions of the legislation that apply to this decision given the issues raised are as follows:

Mobile Homes Act 1983, Chapter 2 Schedule 1

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- (1) *When determining the amount of the new pitch fee particular regard shall be had to –*
- (a) *any sums expended by the owner since the last review date on improvements-*
 - (i) *which are for the benefit of the occupiers of mobile homes on the protected site;*
 - (ii) *which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and*
 - (iii) *to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the appropriate judicial body on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;*
 - (aa) *in the case of a protected site in England, any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph);*
 - (ab) *in the case of a protected site in England, 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 force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph);*

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(A1) *In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(1), there is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index calculated by reference only to—*

- (a) *the latest index, and*
- (b) *the index published for the month which was 12 months before that to which the latest index relates.*

(A2) *In sub-paragraph (A1), “the latest index”—*

(a) *in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;*

(b) *in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).*

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Inspection

7. The Tribunal inspected Oversley Mill Park ('the Site') on the morning of 30th October 2020 in the presence of both parties. Although it had rained quite heavily the day prior to the inspection, on the day of the inspection it was dry.
8. The Respondents confirmed that issues in dispute related to an area of the Site which spanned a corner section of Mill Lane (the site road) between the site office, 49 Oversley Mill Park and 42 Oversley Mill Park. The Property is accessed from Mill Lane from a single section of road located between the site office and 49 Oversley Mill Park. This section of road is covered with gravel top dressing which is uneven in its surface coverage and has areas of sinkage in places. The road through the park is finished in tarmac.
9. Although it had rained the previous day, no standing water was visible during the Tribunal's inspection. The Tribunal did note potholes in the road, these had been filled, and the road appeared to be maintained and in a fair condition.

Submissions

The Applicant's submissions

10. The Applicant's Representative confirmed that the proposed increase, sent in March 2020 to take effect in April 2020, was precisely in accordance with the RPI.
11. The Applicant stated that the Respondents, in their Response, were asking the Tribunal to revisit its previous decision of 23rd April 2020 [Ref: BIR/44UE/PHI/2019/0038] ('the previous decision'). She stated that the Tribunal had, in that decision, already addressed the condition of the Site. She submitted that the Response was, therefore, *res judicata* and, consequently, the Tribunal did not have jurisdiction to deal with the matter and the application should be struck out.
12. If the Tribunal did not agree with such a submission, she pointed to the previous decision and the fact that the Tribunal had found no evidence of

standing water during their inspection, despite it having rained the previous day.

13. She submitted that the photographic evidence that the Respondents had supplied in their bundle comprised the same photographs the Tribunal had previously seen and stated that, if any surface water did collect during a storm, this was only for short period and that it would quickly drain away.
14. She further stated that all of the other Respondents had accepted the pitch fee increase and, therefore, did not appear to have any issues with the roadway surfaces or water drainage.

The Respondents' submissions

15. The Respondents stated that their objection to the site fee increase related to the condition of the road surfaces and the lack of adequate storm and surface water drainage which, they submitted, the Applicant was liable to provide under the site licence. The Respondents further stated that, when they first advised the Applicant of their objection to the site fee increase in 2018, they made it clear that they would pay the appropriate increase as and when road resurfacing works had been completed.
16. The Respondents supplied a bundle of documents with their Response, which included a number of photographs and copies of various items of correspondence, some of which had been formerly submitted to the Tribunal in respect of the previous decision. The Respondents stated that, as their complaint remained the same, it would inevitably call upon evidence previously submitted.
17. The Respondents submitted that, if the Tribunal's inspection took place on a dry weather day (as it had previously done) as opposed to during or immediately after a storm, the photographic evidence was critical as it showed the standing water between the area stretching between the site office and 49 Oversley Mill Park. They stated that the previous decision made no reference to the photographic evidence that had been provided to the Tribunal and confirmed that their bundle included three new photographs taken at 2:30 p.m. on 16th June 2020. They submitted that any photographs taken during a period of heavy rain would look similar and, therefore, the inclusion of any such photographs was relevant to their complaint.
18. The Respondents' bundle of documents included a copy of a letter the Respondents had sent to the Applicant's Representatives, dated 8th July 2020, in which the Respondents submitted that neither the Applicant, her Representatives nor the Tribunal had paid any attention to the photographic evidence previously submitted to the Tribunal which, they stated, showed extensive surface water flooding during and immediately after rainfall.

19. The bundle also included various items of correspondence between the parties. In a letter dated 29th January 2019, the Respondents confirmed to the Applicants that, although since their purchase of the Property they had paid increases in the pitch fee in Spring 2016 and 2017, they would only pay the increase proposed for April 2018 if the Applicant carried out the resurfacing of the site roads prior to March 2019 (as had been referenced by the Applicant as scheduled works in previous correspondence).
20. The letter also set out the Respondents' concerns at the time as to the condition of the Site: "*notably:- Potholes and dangerous depressions are constantly worsening. E.G. the area stretching between your own site office and No. 49 at the opening to our driveway access becomes a wide pool of water during and after heavy rains, as does the roadway in front of the property opposite, due to inadequate drainage.*"
21. In reply, the Applicant stated that the condition of the site roads had not changed since the Respondents had purchased their home in late 2015 and that surface water might be pooling due to the Respondents having finished the external forecourt of their pitch with tarmac. This suggestion was strongly refuted by the Respondents in a letter they sent to OMP Residents Association, on 9th February 2019, in which they confirmed that the surface finish was not tarmac but a bounded resin which was porous.
22. The Respondents stated, in the same letter, that, as the Applicant had referred to the roads being in no different condition from when the Applicants purchased their homes, this implied that the roads had been in need of attention for at least three years.
23. In relation to the Applicant's submission – that the Respondents had not appealed the previous decision – the Respondents stated that the Tribunal had confirmed their pitch fee as £128.23, which they took as being verification of their complaint.
24. Finally, the Respondents stated that they had spoken to the other residents of the Site and that none of them had stated that they were satisfied with the condition of the roads, therefore, the Applicant's assertion in this regard was incorrect.

The Tribunal's Deliberations

25. The Tribunal considered all of the evidence submitted, including all of the correspondence and photographs provided by the Respondents.
26. Where a pitch fee review notice is valid and the application to the Tribunal is made in time, there is a presumption, under paragraph 20, that the pitch fee shall increase (or decrease) by the percentage increase (or decrease) in the RPI. This presumption is rebuttable if the Tribunal

considers it unreasonable for the increase (or decrease) to take place having regard to the matters referred to in paragraph 18(1).

27. The Notice is valid and as the Respondents' specific objections relate to the condition of the Site, in particular the condition of the road and the inadequate provision for storm and surface water drainage, for the presumption under paragraph 20 to be rebutted, the Tribunal must be satisfied that it would be unreasonable for the pitch fee to be increased due to a deterioration in that condition, under paragraph 18(1)(aa).
28. With regard to the Applicant's initial submission – that the Respondents' Response was *res judicata* by virtue of the previous decision – the Tribunal does not agree. Firstly, the previous decision related to the Applicant's notice in relation to a proposed increase in the pitch fee in April 2019, whereas the application before the Tribunal relates to the proposed pitch fee increase to take effect on 1st April 2020. Secondly, although the previous decision was not issued until April 2020, the Tribunal's inspection took place in October 2019 and the Respondents are entitled to submit that the Site has deteriorated since. Thirdly, although some of the evidence provided by the Respondents was also supplied in relation to the previous application, this does not prevent it being relevant to the current application. In fact, when considering whether there has been a deterioration of the Site, photographs of the Site in preceding years and past correspondence between parties can prove valuable.
29. The Tribunal also disagrees with the Respondents' statement that the Tribunal had not referred to the photographic evidence that had been supplied to it in the previous decision, implying that such evidence had not been taken into account. In paragraph 105 of the previous decision (in the section relating to the maintenance of the roads), the Tribunal referred to the bundle of documents received and that it had included photographs and various items of correspondence and, in paragraph 122 of its decision, the Tribunal confirmed that it had considered all of the evidence submitted. In the previous decision, the Tribunal noted that, although it had rained heavily on the days prior to the inspection, there were no areas especially affected by standing water and it did not consider that there was sufficient evidence of deterioration which would make it unreasonable for an increase in line with RPI to be made. The previous decision also confirmed that the pitch fee for the Property had remained at £128.23 per month due to the Applicant's notice in respect of the Property being invalid.
30. In relation to the current application, the Tribunal has, again, considered all of the information provided by each of the parties, together with its own observations during the inspection. The Tribunal has not taken into account whether or not any other pitch fee owners have agreed to pay the increase as they are not parties to this application and have provided no evidence in relation to the same.

31. The Tribunal did not observe any standing water present during its inspection, despite it having rained heavily the previous day. It considered the topography of the Site, and in particular the low lying position of the Property and the small section of the access road leading directly to it. The Tribunal considered that, given its location on the Site in a low lying position, that surface water would collect in this location after periods of heavy rain notwithstanding the surface finish of the road or any resurfacing work that had been carried out by the Respondents on their pitch.
32. Although the Tribunal noted some potholes in the road, which had been filled; the road appeared to be in a fair condition and generally well maintained. The Tribunal did have some concerns that, if surface water continued to stand in the area over the long term, the surface of the road might well deteriorate and that it would be prudent for the Applicant to consider the provision of surface water drainage as part of any future maintenance programme.
33. The Tribunal accepts that on the day it inspected it was dry and the photographs submitted by the Respondents did show areas of standing water in that section of the Site. The Tribunal also notes, however, that the more recent photographs in the bundle, which showed a wide pool of water covering the entire section of that part of the road, had been taken on 16th June 2020, a date on which there had been thunderstorms and significant levels of rainfall in Warwickshire and the West Midlands.
34. The photographs submitted by the Respondents accord with their submissions and the Tribunal accepts that, during or immediately after a storm or particularly heavy rain, the part of the Site in question would have standing pools of water and be at risk of flooding. More pertinent to this application, however, is the question as to whether this represents a “*deterioration*” in the condition of the Site, which is what is required for the presumption under paragraph 20 to be rebutted. Based on the information provided, the Tribunal considers there is little evidence to suggest that it is.
35. The Respondents’ Response refers to the fact that the Applicant had failed to “*take action*” to provide proper storm water drainage or to “*improve*” the road surfaces. The Tribunal notes that this suggests that the Applicant is required to take positive action to improve the Site in order to be able to increase the pitch fee in line with RPI. This is not the case. Paragraph 20 makes it clear that such an increase is presumed unless it would be unreasonable having regard to the matters set out in paragraph 18(1), in this case being a deterioration in the condition of the Site. The Tribunal considered the site road to be in a fair condition and notes that the Site has never benefited from a surface water drainage system.
36. In addition, the copy correspondence supplied indicates that the condition of the roads and surface water flooding has been an issue for some years. Although the Respondents’ letter of 29th January 2019

referred to potholes and dangerous depressions “*constantly worsening*”, the Applicant’s letter in reply referred to the roads being in the same condition as when the Respondents purchased their plot and this was not refuted in the Respondents’ letter of 9th February 2019 to the OMP Residents Association.

37. Having considered all of the information before it, the Tribunal believes that there is insufficient evidence to indicate that there has been a deterioration in the condition of the Site such that the presumption under paragraph 20 should be rebutted. Accordingly, the Tribunal finds that the statutory presumption set out in paragraph 20 of the Act applies and that the pitch fee is to increase by 2.7% as at the date detailed in the Notice, being 1st April 2020.

Appeal

38. If either 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 (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham