



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

Case Reference : **MAN/30UH/PHC/2018/0003**

Site : **18 Broadfields Park, Oxcliffe Road,
Morecambe, Lancashire LA3 3EH**

Applicant : **Mrs Elaine Carter**

Respondent : **Britaniacrest Limited**

Type of Application : **Section 4 Mobile Homes Act 1983**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Niall Walsh (Regional Surveyor)**

Date of hearing : **23 November 2018 & 29 November 2019**

Determined : **26 October 2020**

Code : **A: Face to face (pre-covid 19)**

DECISION

Application

1. Mrs Elaine Carter applies under Section 4 of the Mobile Homes Act 1983 (the Act) for a determination in respect of the pitch fee and boundaries relating to 18 Broadfields Park, Oxcliffe Road, Morecambe, Lancashire LA3 3EH, a mobile home.
2. Mrs Carter's application was received on 17 May 2018. Box 5 of the application form sets out the Applicant's questions. "Why am I being charged £80 per week site fee when 19 out of 22 residents are charged £40 per week site fee for the plot without restrictions. It would appear that I am being discriminated against since the site fee specifically relates to the size of the Park Home and not the size of the plot or the facilities therefore. To determine the validity of the restrictions placed on the plot negating the possibility of any private future sale.
To determine a fair and reasonable site fee having regard to what 86% of the other residents are charged."

Hearings

3. Hearings took place on 23 November 2018 and 23 November 2019.
4. Mrs Carter attended the hearing supported by Mr Thorpe, who leads the Residents Association at Broadfields Park.
5. Mr Richard Mullan, a Barrister represented the Respondent Company, Britaniacrest Limited. Mr Richard Hill, Director attended.

Inspection

6. The Tribunal attended Broadfields Park on the morning of 29 November 2019.
7. The Tribunal inspected the site paying particular attention to Mrs Carter's mobile home and abutting areas.
8. The Tribunal observed the size and location of other mobile homes and pitches.

Preliminary decision

9. Following the hearing on 23 November 2018 the Tribunal issued its conclusions about its jurisdiction to consider the application. It determined the date Mrs Carter received the written terms of her site agreement. The Tribunal's preliminary decision is annexed and is incorporated in this decision.
10. Directions made following that decision provided for further case statements documentary evidence and submissions.

Background

11. The background to the application is set out in the preliminary decision annexed. This notes evidence and submissions relevant to the preliminary issue and the matters considered below.

12. In compliance with directions the parties provided case statements, hearing bundles, copy documents, position statements and skeleton arguments at stages in the proceedings. Oral evidence and submissions were given on behalf of both parties.
13. Following the hearing on 29 November 2019 but prior to the Tribunal's decision, directions were issued giving an opportunity for the parties to provide further evidence and submissions on information that had come to light. Both parties responded.
14. Covid related restrictions have delayed access to the papers.
15. The Tribunal convened without the parties on 26 October 2020 to determine the application.
16. The Tribunal's conclusions below include references to relevant evidence and submissions.

The Law

17. The relevant statutory provisions are reproduced within the preliminary decision annexed.
18. The relevant standard of proof is the civil standard of proof, that is a balance of probabilities; what is more likely than not.

Conclusions

Pitch fee

19. Mr Hill stated within his successive witness statements and his oral evidence that the pitch fee agreed with Mrs Carter was £80 per week. Mrs Carter believes that the pitch fee agreed at the time she and her husband bought the home was £35 per week. The written agreement states £80 per week payable monthly and unchallenged evidence shows that is the sum she has paid. The Tribunal was not told that arrears have accumulated and there is no evidence a lower weekly sum has been accepted.
20. Mr Hill stated that he would not have accepted £35 per week and the agreement to pay £80 per week was freely entered into and signed. This was the market rate at the time of that letting. He commented that the pitch fees payable by home owners when the site was acquired by Britaniacrest Limited were unsustainably low and all future agreements were at higher rates. His statement dated 9 September 2020 refers to pitch fees agreed at £50, £80 and £85 per week as examples of the market rate at the time and that Mrs Carter's mobile home is larger than any other home on the park; "It follows that Mrs Carter's pitch is actually twice the size of some pitches at Broadfields."
21. At the hearing Mrs Carter repeated that the pitch fee mentioned to her was £35 per week but was not able to satisfactorily explain why she has made payments at £80 per week. We are aware that family circumstances at the time were difficult; Mr and Mrs Carter were to reside in the mobile home but Mr Carter became ill and hospitalised and died sometime later. Mr Carter was in a care home at time of the agreement suffering from dementia. Mrs Carter said that Mr Hill drove her to the care home for Mr Carter's signature.

22. Mr Thorpe prepared a list of pitches and fees on Mrs Carter's behalf however many of the agreements predate Britaniacrest's ownership of the site. The pattern that emerges is that earlier lettings were agreed at rates significantly lower than more recent lettings. They are not in themselves determinative.
23. Mrs Carter's recollection of events was wanting. Her memory of other events including the whereabouts of papers was not reliable. This is not a personal criticism, however in a dispute of this nature we must consider the veracity and credibility of the witnesses and their evidence. We have to do so in the context of surrounding circumstances. Taking into account the circumstances set out by Mr Hill particularly the renewed commercial approach to site management following Britaniacrest's acquisition, we find that the £80 per week pitch fee was put forward at the time of the agreement. It is within the range of Britaniacrest's other agreements around that time and our view is reinforced by the fact that Mr Carter paid the fee at that rate. We find it improbable that agreement was reached at an amount which would have been particularly low for a plot of that size, even within the range of pre-Britaniacrest pitch fees
24. For the above reasons, on a civil standard of proof, we conclude the written agreement correctly records the pitch fee at £80 per week.

Size of plot

25. Mrs Carter submits that the plan within the written agreement is inaccurate. Paragraph 5 of the written agreement refers to the size and location of the pitch as the size of the base, the same size as the home, 42ft x 20ft approximately. Printed pro forma plan guidance includes "measurements between identifiable fixed points on the site and pitch and base." The plan endorsed shows an area between pitches 17 and 18 with 18, the subject pitch opposite a bend in the road.
26. Paragraph 14 of Mr Hill's 9 September 2020 statement includes that Mrs Carter's pitch is twice the size of some pitches and that "it would not be right to say we could have fitted 2 caravans on her pitch because of the spacing regulations but it is right to say it has cost us more to provide this doubt size plot Mrs Carter's pitch (18) is 42ft x 20ft = 840m²."
27. Photographs submitted on behalf of Mrs Carter of the rear view of 18 show a patio and garden area. It is partly decked with the balance surfaced. The front views show double gates behind which are steps to the mobile home, a flagged parking area and garage and a driveway to the garage. This was noted during the Tribunal's inspection.
28. Mrs Carter understood the pitch agreement she reached related to the plot including a garage/parking space and not determined by the side walls of the mobile home.
29. A letter dated 5 April 2018 addressed to Mr Hill at Britaniacrest includes "When I viewed the Park Home at 18 Broadfields Park I was shown around by yourself and the plot was described verbally as having a drive with garage and outbuildings plus a small garden to the rear, facilities enjoyed by the previous owner, and I accepted it as seen for the purchase price of £100,000."
30. Mr Hill's undated response to the Applicant's bundle pursuant to directions of 13 June refers at paragraph 19 to p.2 of the agreement "the standard (type) part of the written agreement states the pitch is the size of the space plus access only." The Tribunal finds this immediately below the grid which contains the plan. The issues for

the Tribunal is whether the reference to “access” includes the area understood by Mrs Carter and whether the printed words reflect the agreement at the time.

31. Evidence submitted includes a copy of an undated pitch fee agreement relating to a new plot let to Mr Davies measuring 40ft x 13ft adjacent to the “house”. Another exhibit relates to plot 22 also undated. These indicate Britaniacrest’s practice of defining base measurements in written agreements and stating that the pitch is of the same measurement. This may have been Britaniacrest’s intention at the time of agreement with Mrs Carter but the reality is that discussions took place in respect of a home with adjacent area clearly defined by boundaries, gates and a developed area at the rear. We have no doubt that she considered she had contracted both the benefit and the responsibility of the entire area including the home and its adjacent amenity areas. This of course was reflected in what was at the time a significantly greater pitch fee than for others on the site.
32. We have not heard whether Mrs Carter has been deprived use of the areas abutting the mobile home, however, we find that at all points during her consideration discussion and agreement with Mr Hill she was of the mind that the pitch she had viewed, defined by its physical boundaries beyond the walls of the actual home was that which was the subject of the agreement. Neither party gave evidence that she was told to the contrary at any time prior to receipt of the written agreement. Despite our findings relating to Mrs Carter’s recollection we consider it improbable she would not have recalled that the site was bounded by the walls of the home only.
33. We have found Mrs Carter did not receive written particulars until some considerable time after she acquired the mobile home. It is clear this was the first time she became aware of the plot size purported by Mr Hill. She was not prevented from using the areas outside the walls of the home; this is consistent with her view about the extent of her plot. Mr Mullan’s closing submissions included that this has not proved a problem elsewhere and no one has been stopped from enjoying their property although access is required for example to an electricity substation.
34. Applying the civil standard of proof explained above, we conclude that the negotiations and conclusion of the agreement was based on the home and adjacent areas as understood by Mrs Carter and reflected by physical boundary structures at the location. Accordingly the written particulars are in error and require amendment.

Plot restrictions

35. Mrs Carter’s initial application included this phrase. Throughout the proceedings the issues addressed were the matters considered above. We assume this reference relates to identification of the pitch size. No other terms of the agreement were disputed and accordingly we do not find grounds to determine “the validity of the restrictions.”

Summary

36. For the above reasons we conclude that the pitch fee stated within the written agreement is correct but the plan and plot size requires amendment. We determine the Applicant’s questions in relation to the agreement accordingly.

Order Accordingly

Laurence J Bennett
Tribunal Judge
26 October 2020