



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

Case Reference : **MAN/13UH/PHI/2020/0004 V**

Property : **1, CHERRY MEWS, ASHWOOD PARK,
MARSTON, NORTHWICH, CW9 6RQ**

Applicant : **TINGDENE PARKS LIMITED**

Respondents : **RUSSELL M JENNINGS and JULIA A
GRIFFITHS**

**Type of
Application** : **APPLICATION FOR DETERMINATION OF
NEW PITCH FEE: Mobile Homes Act 1983,
Schedule 1, Part 1, Chapter 2, Para 16**

Tribunal Members : **A M Davies, LLB
P Mountain**

Date of Decision : **22 March 2021**

**Date of
Determination** : **21 May 2021**

DECISION

1. The pitch fee payable by the Respondents for the year commencing 1 April 2020 is £1,876.56.
2. The Respondents shall pay the Applicant the sum of £300 representing the Tribunal's application and hearing fees.

REASONS

BACKGROUND

1. On 11 May 2018 the Respondents entered into a contract with the Applicant for the purchase of the park home known as 1 Cherry Mews, Ashwood Park in Marston. Ashwood Park is a protected site as defined by the Mobile Homes Act 1983, as amended ("the 1983 Act").
2. The Respondents' initial pitch fee was £1788, and was increased by agreement with reference to RPI on 1 April 2019 to £1,836.24.
3. On or about 28 January 2020 the Applicant served a Pitch Fee Review Form requiring the Respondents to pay, from 1 April 2020, a pitch fee increased by reference to the RPI increase (2.2%) since the previous year. The Respondents failed to accept the proposed increase, and on 23 June 2020 the Applicant applied to the Tribunal for a determination as to the pitch fee the Respondents should pay.

BASIS OF DECISION

4. On the afternoon of the working day prior to the hearing, the Applicant sent to the Tribunal and the Respondents copy emails from its contractor. In response, on the morning of the hearing the Respondents submitted a further witness statement and accompanying documents. At the hearing, after listening to representations from the parties, the Tribunal determined that this additional evidence was not to be admitted.
5. The pitch fee determination was made on the basis of the parties' written statements served in accordance with directions and the representations they made during the online hearing on 22 March 2021. No site inspection was required by either party.

THE LAW

6. Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 (as amended) ("the Implied Terms") sets out the terms implied into every contract between the owner and occupier of a pitch on a protected site.
7. Paragraph 17 of the Implied Terms provides for annual reviews on the review date and continues, so far as relevant, as follows:
 - (8) *If the occupier has not agreed to the proposed pitch fee*
 - (a) *the owner may apply to the [Tribunal] for an order under paragraph 16(b) determining the amount of the new pitch fee;*

(b) *the occupier shall continue to pay the current pitch fee to the owner until such time as an order determining the amount of the new pitch fee is made by the [Tribunal]*

8. Paragraph 18 provides

“(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*

(b) *any decrease in the amenity of the protected site since the last review date; and*

(c) *the effect of any enactment*”

9. Paragraph 20 of the Implied Terms provides

“(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 since the last review date, unless this would be unreasonable having regard to paragraph 18 (1) above.*

10. At the hearing reference was also made the definition of “pitch fee” at paragraph 29 of the Implied Terms, which reads:

“pitch fee” means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance.....”

THE REASON FOR NON-PAYMENT

11. The Respondents do not dispute the RPI figure applied by the Applicant to reach the new pitch fee, and do not claim that there has been any procedural defect. Their reason for refusing to pay the pitch fee increase is that they and the Applicant discovered after their purchase that contractors tasked with building brick “skirts” round the park homes at Ashwood Park had failed in a number of cases to apply to damp-proof membrane. In the absence of such a membrane a 25mm minimum gap is required between the brickwork and the park home, and this minimum had been breached.

12. The Respondents do not produce evidence that their home suffered damage as a result of the contractors’ failure. However they say:

(a) Although the brick skirt has been rectified, there remain areas, particularly at the steps to the door of their park home, where mortar, concrete or brickwork touch the park home.

- (b) During the 2 years or more prior to rectification of the brick skirt, damp may have penetrated and could ultimately damage their home, noxious gases may have built up beneath their home, and damp may still penetrate in the areas of the steps.
 - (c) While the “25mm rule” is breached, they believe they are unable to fulfill their obligation, set out at paragraph 21(d) of the Implied Terms, to keep their home in a sound state of repair. They say that this breach on their part is caused by the Applicant’s contractor’s past and continuing failures to create 25mm gaps below their park home or alternatively to provide an adequate damp proof membrane in the brick skirting.
 - (e) Finally, they object to the fact that the Applicant lodged an application for determination of the pitch fee without communicating their intention to do so.
13. At the hearing Ms Griffiths spoke for the Respondents, and said that they were concerned for the future upkeep of their home, into which they had sunk their savings, and that, other than refusing to agree to the pitch fee increase, they did not know how to require the Applicant to remedy the defects that had been discovered.

THE APPLICANT’S CASE

14. Mr Ryan of Ryan and Frost solicitors represented the Applicant at the hearing. He argued that the matters complained of regarding (admitted) defects in the setting up of the park home did not amount to a deterioration in the condition or decrease in the amenity of the site or the services provided by the Applicant. He said that such matters were not properly to be taken into account in assessing the pitch fee increase, and that there were no circumstances making it unreasonable to apply an increase by reference to RPI in the usual way.

FINDINGS

15. The Applicant was entitled to apply to the Tribunal for a determination and was obliged to do so within the statutory time limit. There were ongoing communications regarding the defects in the brickwork and setting up of the home at 1 Cherry Mews. However the Applicant was entitled to take the view that the only communication from the Respondents relevant to this application would be an agreement to pay the pitch fee increase.
16. Although somewhat slowly, the Applicant has remedied the main defects identified in the setting up of the Respondents’ home and other homes sited at Ashwood Park in recent years. It has offered to carry out further remedial work around the steps to the door of the Respondents’ home if this is considered desirable. The Respondents have acknowledged that the Platinum Seal Warranty for their home remains in place.

17. In the light of the definition of “pitch fee” quoted above, the defects in the brickwork skirt and around the steps are not matters properly to be taken into account in determining the pitch fee increase applicable from 1 April 2020. They do not represent a deterioration in the site or its amenities. It is entirely reasonable to apply an RPI-related increase. The Respondents’ concerns, to the extent that there may be continuing claims, should be pursued as contractual or consumer rights claims.
18. The application was justified, and the Respondents are therefore to repay the Tribunal’s application and hearing fees incurred by the Applicant.

Tribunal Judge A Davies

22 March 2021