



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

Case Reference : **MAN/30UQ/PHI/2020/0001V**
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Properties : **32 and 33 Acresfield Park, Garstang Bypass
Road, Garstang, Preston, PR3 1PW**

Applicant : **Residential Parks Ltd.**

Respondents : **Mrs Sandra Keeling (1)**
Mr Patrick Johnston & Ms Elizabeth Bott (2)

Type of Application : **To determine pitch fees under paragraph 16 of
Schedule 1 Chapter 1 to the Mobile Homes Act
1983**

Tribunal Members : **Judge P Forster**
Mr P Mountain

Date of Decision : **25 May 2021**

DECISION (amended)

The Decision

The pitch fees for 32 and 33 Acresfield Park are increased from £224.55 per month to £229.25 per month with effect from 1 January 2020.

The Background

1. There are 2 related applications under Schedule 1 of the Mobile Homes Act 1983 (“the Act”) for the Tribunal to determine the level of a new pitch fee from 1 January 2020. The applications were received by the Tribunal on 20 March 2020.
2. Residential Parks Ltd. (“the Applicant”) is the owner and operator of Acresfield Park, Garstang Bypass Road, Garstang, Preston, PR3 1PW (“the Site”) which is a licenced site under the Caravan Sites and Control of Development Act 1960 and is subject to the Act.
3. Mrs Sandra Keeling (“the 1st Respondent”) is the owner of a park home on the Site, 33 Acresfield Park. She and her late husband purchased their home in November 2015. As jointly owned property, the park home now vests in Mrs Keeling’s sole ownership.
4. Mr Patrick Johnston and Ms Elizabeth Bott (“the 2nd Respondents”) are the owners of an adjacent park home on the Site, 32 Acresfield, which they purchased in April 2018.
5. The Respondents were served with a notice dated 20 November 2019 purporting to increase the pitch fee from £224.55 per month to £229.25 with effect from 1 January 2020. The notice was in the prescribed form. The increase was calculated in accordance with the Retail Price Index at 2.1% based on the RPI for October 2019.
6. The Tribunal issued Directions on 7 October 2020 stating that the application would be determined without a hearing unless one was requested by any of the parties. The Applicant requested a hearing and therefore a video hearing was held on 25 May 2021. The Applicant was represented by Mr Michael Mullen and Mrs Keeling and Mrs Bott represented themselves.

The Respondents’ case

7. The 1st Respondent objects to the compound that is opposite her park home which is used for storage of building materials, plant and machinery. She has asked the Applicant for a temporary reduction in the pitch fee to reflect the presence of this “unsightly compound”. The 1st Respondent says that the

Tribunal must have regard to any deterioration in condition and any decrease in amenity of the Site when it determines the amount of the pitch fee (para 18(1) (aa) of Schedule 1 to the Act). Further, she is entitled to the quiet enjoyment of her park home (para 11). The Applicant has an obligation to maintain the Site in a clean and tidy condition (para 22(d)). The 1st Respondent argues that the Applicant is obliged to refrain from causing nuisance, annoyance, inconvenience or disturbance to the residents (by reference to the owner's obligation under clause 3(i) of the express terms of the agreement).

8. The 1st Respondent accepts that the development of the Site has taken longer than anticipated but this does not alleviate her concerns, namely that she is living in close quarters to a builder's compound, suffering all the inconvenience and disturbance which that generates. This has been the position for the last 5 years. The Applicant has failed to respond to the 1st Respondent's requests for a meeting. She has always sought to resolve matters informally.
9. The 2nd Respondents adopt the arguments made by the 1st Respondent. Their park home is next to that of the 1st Respondent and also overlooks the compound. They have asked the Applicant to reduce the pitch fee to reflect the presence of the compound. Their requests for a meeting have been ignored. The lack of communication has prompted them to withhold the pitch fee increase. The issue is a simple one, when the 2nd Respondents bought their home, they were told that the compound was a temporary arrangement but yet they have lived alongside it for more than 2 years and there is no indication when it will be removed. The Applicant uses the compound as a base for its other sites.
10. Wagons and vans need access to the compound and this is done via the narrow road that services the Site. The greatest impact is the noise of vehicles. The compound is not used infrequently as suggested by the Applicant. It is unfair to have to pay the full pitch fee when they cannot experience the amenity which they were led to believe the Site enjoyed. The Applicant has been unwilling to discuss matters and has chosen to issue proceedings.
11. The 2nd Respondents have provided a record of the number of times the compound was used between 4 February and 9 April 2020. This is not a complete record of events.
12. A witness statement is provided from Mr Malcolm Fishwick who owns No.21 Acresfield. He and his wife have lived there since 2014. He states that they were given assurances by the Applicant when they moved in that the area now occupied by the compound would be cleared and landscaped within three or four months. That did not happen. When Mr Fishwick complained in 2015, he was told that an application had been made for planning permission to

construct a permanent office and workshop away from the Park but that has not been done.

13. Neither the 1st nor 2nd Respondents dispute that they received the pitch fee notices dated 20 November 2019. They do not challenge the validity of the notices or the procedure adopted by the Applicant.

The Applicant's Case

14. Acresfield Park has planning consent for 43 residential park homes. No.33 was the 17th home to be sited on the development. There are currently 40 occupied pitches on the Site and a further 3 homes are on order.
15. A compound for the storage of materials, plant and machinery was created in 2010 on the site where No.30 now stands. It was moved to its current location in about 2017. It is opposite Nos.32 and 33. The compound is used to store materials, soil, and from July 2019, for the secure storage of plant and machinery. Work only takes place on the Site on weekdays, usually between 8am to 6pm. The development of the park is a necessary activity and all reasonable steps are taken to ensure no undue inconvenience is caused to the residents. Work only takes place when necessary and this depends upon the number of new homes sold. The Applicant has recently applied for planning consent for a new office, storage and compound facilities to be located on a newly quired adjacent site. If consent is given the compound will be cleared.
16. The Site has been improved and the amenity value increased since the 1st Respondent moved there in 2015. It is now nearing the end of development with only a few pitches left to be occupied.
17. The pitch fee has been increased in accordance with the statutory provisions in paragraphs 16 to 20 of Schedule 1 to the Act.

The Issue

18. The Tribunal is asked to determine the amount of the pitch fee payable by the Respondents with effect from 1 January 2020. The issue between the parties is the compound and whether this has caused any deterioration in condition or any decrease in the amenity of the Site since the last pitch fee review.

The Law

19. Provisions relating to the review of a pitch fee are contained in paragraphs 16 to 20 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act. The pitch fee can only be changed either with the agreement of the occupier, or by the Tribunal, on the application of the owner or the occupier (16). The pitch fee shall be reviewed annually as at the review date (17(1)).

20. The owner serves on the occupier a written notice setting out the proposed new pitch fee (17(2)). If it is agreed, the new pitch fee is payable from the review date (17(3)). If it is not agreed, the owner may make an application to the Tribunal to determine the new pitch fee (17(4)). Once decided, the new pitch fee is payable from the review date (17(4)(c)).
21. When determining the amount of the new pitch fee, particular regard shall be had to any sums expended by the owner since the last review date on improvements (18(1)(a)) and any decrease in the amenity of the protected site since the last review date (18(1)(aa)). Unless it would be unreasonable, 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 (20(A1)).

The Decision

22. The compound existed when the 1st Respondent purchased her park home in November 2015 and the 2nd Respondents purchased their home in April 2018. The compound is still in use and that is precisely the point of the Respondents' complaint. Despite assurances from the Applicant that the compound was temporary, it has been there since 2010 and is still in use today. The Applicant told the Respondents and other residents as long ago as 2015, that a planning application would be made for consent for new compound facilities and that if consent was given the existing compound would be cleared. The planning application was only made in 2020. The Applicant uses the compound as a base for its other sites.
23. The Tribunal needs to consider the Site as a whole and over the years, as more pitches have been occupied, improvements have been made, and overall, the amenity value has increased for most of the residents. The Respondents have not shared these improvements because of the proximity of their homes to the compound. They accept that most of the other residents will not be adversely affected by the compound.
24. On the evidence, there have been some changes to the use of the compound since the previous pitch fee was reviewed in 2018, but these have not been substantial or greatly increased the impact of the facility on the Respondents. The Tribunal must consider the position since the last pitch fee review and this means that there has been no deterioration in condition or any decrease in the amenity of the Site. Therefore, no deduction can be allowed when determining the amount of the pitch fee.
25. The 1st Respondent argued that she is entitled to the quiet enjoyment of her park home. As she conceded, that has a strict legal meaning and does not relate to the noise and inconvenience she complains about. She also raised a point about the

express terms of the agreement and readily admitted that the obligation to refrain from causing nuisance, annoyance, inconvenience or disturbance is on the residents and not on the owner of the Site. The terms of the agreement, both express and implied, include provisions that protect the residents, such as that cited by the 1st Respondent, the obligation on the Applicant to maintain the Site in a clean and tidy condition. That is an issue about the enforcement of the agreement and not the subject of the present application. The Tribunal has the power under s.4 of the Act to determine a question arising under the Act or under an agreement to which the Act applies. The Respondents have not chosen that route and instead they have withheld payment of the increased amount of the pitch fee, but that is not the appropriate remedy in this case.

26. As in many pitch fee disputes, the real issue is not the amount of the fee but other matters of contention between the residents and the site owner. In the present case, the Applicant has failed to talk to the Respondents and has left them feeling ignored and angry. Development of the Site is coming to an end and subject to planning consent, a new location has been found to store materials and equipment away from the Respondents. Hopefully, that will resolve the problem.
27. The Tribunal is asked to determine the amount of the pitch fee payable from 1 January 2020. The Applicant claims £229.25 per month as shown in the notice of increase dated 20 November 2019. That amount is calculated on the RPI applied to £224.55 which was the pitch fee set in the previous notice of increase which was accepted by the Respondents.
28. The Tribunal find that it is reasonable to increase the pitch fee in accordance with the increase in the Retail Price Index. There is a statutory presumption that the pitch fee will follow the Index.
29. The starting point is the pitch fee of £224.55. That stands to be changed by the increase in the RPI by reference to the published RPI for October 2019 by 2.1%. The amount payable by the Respondents from 1 January 2020 is therefore £229.25.

Judge P Forster
25 May 2021