FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DB/PHI/2019/0004**
Property	**:**	**OAKLAND HILL ESTATE, FRYSTON LANE FERRYBRIDGE WF11 8AJ**
Applicant	**:**	**OAKLAND HILL PARK ESTATE LIMITED**
Respondents	**:**	**As attached schedule**
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 E Mountain**
Date of Determination	**:**	**3 March 2020**
Date of Decision	**:**	**22 April 2020**

DECISION

The pitch fee payable by the Respondents for the year commencing 1 April 2019 is the pitch fee for the previous year increased by a percentage equivalent to RPI for the relevant period (2.5%).

REASONS

BACKGROUND

1. On 20 February 2019 the Applicant sent to each of the Respondents at Oakland Hill ("the Park") a Pitch Fee Review Notice advising that the pitch fee payable for the year beginning 1 April 2019 would be the pitch fee for the previous year plus a percentage increase of 2.5% (RPI) and an additional charge ("the additional pitch fee increase") of £4.32 per month.

2. The Respondents agreed to the RPI percentage increase but did not agree to the additional pitch fee increase.

3. On 17 June 2019 the Applicant sought a determination from the Tribunal as to the pitch fee payable.

THE LAW

4. 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 such as Oakland Hill Estate

5. Paragraph 16 of the Implied Terms provides that

> "*the pitch fee can only be changed……., either –*
>
> *(a) with the agreement of the occupier, or*
> (b) *if [the Tribunal] ……. considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.*"

6. 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*
> *(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 [Tribunal], on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee; …….;*

7. 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."*

8. Paragraph 22 (e) and (f) read:

> *22 The owner shall…*
>
> *(e) consult the occupier about improvements to the protected site in general and in particular about those which the owner whishes to be taken into account when determining the amount of any new pitch fee;*
>
> *(f) consult a qualifying residents' association, if there is one, about all matters which relate to the operation and management of, or improvements to, the protected site and may affect the occupiers either directly or indirectly.*

9. Paragraphs 24 and 25 define "consult" as

> *24 (a) to give the occupier at least 28 clear days' notice in writing of the proposed improvements which –*
>
> *(i) describes the proposed improvements and how they will benefit the occupier in the long and short term;*
>
> *(ii) details how the pitch fee may be affected when it is next reviewed; and*
>
> *(iii) states when and where the occupier can make representations about the proposed improvements; and*
>
> *(b) to take into account any representations made by the occupier about the proposed improvements in accordance with paragraph (a)(iii), before undertaking them.*
>
> *25 (a) to give the association at least 28 clear days' notice in writing of the matters referred to in paragraph 22 (f) which*
>
> *(i) describes the matters and how they may affect the occupiers either directly or indirectly in the long and short term; and*
>
> *(ii) states when and where the association can make representations about the matters, and*
>
> *(b) to take into account any representations made by the association, in accordance with paragraph (a)(iii), before proceeding with the matters.*

10. It was common ground between the parties that the majority of the residents at the Park were members of a qualifying residents' association.

INSPECTION

11. The Tribunal inspected Oakland Hill on 3 March 2020, accompanied by Mr and Mrs Southall who own the Applicant company, and Mrs Mannering representing the Respondents.

12. The Tribunal were shown the fenced area under which is sited the sewage treatment plant ("the Treatment Plant") that serves the Park, and other areas of the Park. The Park is well maintained but residents' enjoyment of the site is affected by smells emanating from the Treatment Plant.

HEARING

13. At a hearing in Leeds after the inspection, Mrs Southall appeared for the Applicant and the Respondents were represented by Mr Jack Curtis, a resident at the Park.

14. Each party supplied a number of documents, including some 38 individual statements from residents of the Park. Most of the documents and almost all of the witness statements dealt with the unfortunate hostility between the Respondents and Mr and Mrs Southall, and were irrelevant to the issue before the Tribunal, ie whether repairs and improvements to the Treatment Plant and sewerage system justified the additional pitch fee increase.

15. At the hearing Mr Hibbert, a resident on the Park, gave evidence as to how the sewerage system worked, and the history of maintenance and replacement of its parts.

16. The Tribunal established at the hearing that there were at that time 68 Respondents out of a total of 90 residents at the Park, of which 84 were members of the Qualifying Residents Association. Of the Respondents, 40 had originally contracted with the Park owner to pay a pitch fee which did not include the cost of the sewerage service, and 28 had agreements which indicated that their pitch fee included the cost of sewerage.

THE APPLICANT'S CASE

17. Mrs Southall sought to justify the additional pitch fee increase by reference to three new pumps that the Applicant had had installed in the Treatment Plant tanks in February 2019. The cost of the three pumps was £4,368. To this figure the Applicant had added £298 representing the cost of materials for additional work to the sewerage system which had been carried out by Mr Southall. The total expenditure of £4,666 had been divided equally between the 90 residents (£4.32 per month per resident) and it was proposed that these payments be added to the pitch fees, with a view to recovery of the cost of the work over a period of 12 months.

18. As to whether the new pumps and other work constituted an improvement to the Park, Mrs Southall said that the new pumps were "more robust maybe". Two pumps had failed and had been replaced during the year ending 31 March 2018. In February 2020 three pumps, including one or more of those installed in February 2019, had had to be replaced again at a cost of £3,188 plus VAT.

19. It was accepted by the Respondents that the reason for repeated failures of the pumps is the disposal of inappropriate material into the sewerage system. Over a period of years during which this problem has persisted, it has not proved possible to ensure that only permitted material enters the system. Mrs Southall took the view that in these circumstances the Park residents as a whole must take responsibility and bear the repeated repair costs.

20. Mrs Southall told the Tribunal that she had obtained costings for joining the Park to mains sewerage, which would transfer responsibility for maintaining the system to Yorkshire Water. However a majority of the residents had opposed the plan.

THE RESPONDENTS' CASE

21. Mr Curtis for the Respondents told the Tribunal that since 2004 the Park owners had borne the cost of repairs to the Treatment Plant, and that there was no reason why the residents should now be expected to pay. He said that it had not been possible to identify those people who were misusing the sewerage system, but that it was unfair to expect those residents who only dispose of permitted material to pay costs caused by those who flout the rules.

22. Mr Curtis also claimed that there had been no effective consultation with the residents and the Residents' Association prior to the pumps being replaced in February 2019. The Applicant had sent a letter dated 28 January 2019 to each resident which complied with paragraph 24(a)(i) and (ii) of the Implied Terms but, he said, the third page (which in the copy provided to the Tribunal by the Applicant explained to the residents how they could make representations to the Applicant) was missing. In any event, the work was carried out before expiry of the 28 day consultation period provided for by paragraphs 24(a) and 25(a) of the Implied Terms.

23. On this point Mrs Southall said that the work had had to be carried out within the consultation period because the pumps had failed, the sewerage system was not working, and the Applicant was in breach of its licence until the repair was effected. She denied that the third page was missing from the letter dated 28 January 2019 when it was served on the Respondents.

24. Finally, Mr Curtis told the Tribunal that the tanks were emptied 3 or 4 times a year prior to 2017, but that the Applicant was now having them emptied less often. The Respondents considered that this was causing the tanks to

overflow, and damaging the pumps.

25. In response to this last point, Mrs Southall said that the Applicant managed the Treatment Plant and emptied the tanks as advised by their engineer Mr Newton and approved by the Environment Agency.

FINDINGS

26. The Tribunal finds that

26.1 no consultation with the Respondents took place as required by the Implied Terms, as the work was carried out as an emergency within the 28 day consultation period;

26.2 although in the circumstances the Tribunal might have overlooked the lack of consultation, the replacement of the pumps in February 2019 was a repair and not an improvement to the Treatment Plant, as evidenced by the fact that the pumps had failed again within 12-13 months, and for the same reasons;

26.3 the cost of repairs to the sewerage system was included in the pitch fees of 28 residents. Those residents were not identified by the parties in these proceedings.

26.4 although paragraph 18(1) of the Implied Terms allows for an increase in pitch fee over and above the RPI percentage for reasons other than park improvements in exceptional cases, no such exceptional circumstances were relied upon by the Applicant or identified by the Tribunal;

26.5 in any event the additional pitch fee increase would have enabled the Applicant to recover the whole cost of the works within a year, whereas a pitch fee increase to reflect an improvement to a park would normally be spread over the expected life of the improvement;

26.6 the Applicant has a potential remedy for its difficulties with the Treatment Plant: namely an application to the Tribunal for an order under paragraph 18(a)(iii) that the cost of connection to mains drainage could be taken into account when determining a pitch fee.

27. In the circumstances the increase in the Respondents' pitch fee for the period 1 April 2019 to 31 March 2020 is to be limited to the agreed 2.5% RPI related uplift.