



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **CHI/24UJ/PHI/2022/0001 & 0002**

**Site** : **Church Farm Close Park,  
Dibden,  
Southampton CO45 5TG**

**Park Home addresses** : **9 and 108 Church Farm Close Park**

**Applicant  
Represented by** : **The Berkeley Leisure Group Ltd.  
Tozers LLP**

**Respondents** : **Ms. P. J. Purnell (9)  
Mr. T.B. Richards and  
Miss. D. McNab Weir (108)**

**Date of Applications** : **21<sup>st</sup> January 2022**

**Type of application** : **to determine pitch fees for the  
park home addresses**

**The Tribunal** : **Judge Bruce Edgington**

**Date of decisions** : **8<sup>th</sup> June 2022**

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## **DECISION**

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1. The applications dated 21<sup>st</sup> January 2022 in respect of each park home address be and are hereby dismissed.

### **Reasons**

#### **Introduction**

2. This is an unusual case in the sense that there is no real disagreement between the parties as to the facts or the dates upon which various 'happenings' have occurred. The only real issue is whether the applications should be dismissed because they have been wrongly brought, as a matter of law. Accordingly, I shall concentrate on that issue.
3. One bundle of documents has been lodged for each park home. Unfortunately they have the same sets of page numbering. When I refer to a page number, I shall therefore add the relevant park home address of the bundle I am talking about.
4. I should also make it clear that earlier applications were made relating to the same notices of increase as are set out in these applications. The case

numbers were CHI/24UJ/PHI/2021/0094 and 0095 relating to pitches 9 and 108 respectively. Applications have been made to withdraw those applications and it is recorded in the directions orders that they both now stand as having being withdrawn.

### **Procedure**

5. The Tribunal made directions orders on the 28<sup>th</sup> March 2022 timetabling these cases to a final conclusion with a decision being made following a consideration of the filed papers unless any party objected, which they have not. It has been considered appropriate to list these cases to be dealt with together, as happened for a previous hearing on the 24<sup>th</sup> August 2021.

### **Site Inspection**

6. As there is nothing within the applications which needs the Tribunal members to inspect the site, and prior to the decision following the 24<sup>th</sup> August hearing the then Tribunal members did inspect the site, no additional inspection has been deemed to be necessary. None has been requested.

### **Discussion**

7. It will assist in understanding the main issue if I set out a chronology which is largely agreed by the parties:-

<u>Date</u>	<u>Event</u>
1 <sup>st</sup> January 2019	last review date acted upon
20 <sup>th</sup> November 2020	Notices of increases served for review date on 1 <sup>st</sup> January 2021
24 <sup>th</sup> August 2021	date of hearing following which the Tribunal dismissed applications for new pitch fees as the notices served had been defective
24 <sup>th</sup> September 2021	new notices of increases in pitch fees served
1 <sup>st</sup> November 2021	date when new pitch fees were to become payable
12 <sup>th</sup> November 2021	applications made to the Tribunal to increase pitch fees
1 <sup>st</sup> January 2022	new review date under the pitch agreements
21 <sup>st</sup> January 2022	these applications lodged
26 <sup>th</sup> January 2022	Applicant withdraws applications made on 12 <sup>th</sup> November 2021

8. The Respondent Ms. Purnell has filed her submissions dated 19<sup>th</sup> April 2022 (page C43 in the pitch 9 bundle). She says that as the Tribunal

dismissed applications relating to the same review date following the hearing on the 24<sup>th</sup> August 2021, the Applicant does not have the power to make another application in respect of the 2021 review.

9. The Respondents Mr. Richards and Miss. McNab Weir have filed their submissions (pages C44 to C51 in the pitch 108 bundle). They make the same point. They also say that a letter of consent signed by them to the withdrawal of the application made on the 12<sup>th</sup> November did not amount to a consent. My initial conclusion, having seen that letter, is that they do actually say that they agree with the withdrawal. However, as this decision is not in respect of application CHI/24UJ/2021/0095, it is somewhat irrelevant.
10. The Applicant, through Mr. Stephen Drew, a director, says, in effect, that these applications should proceed and the Applicant should be given the increases set out in the 24<sup>th</sup> September notices. He says that just because previous applications relating to the same review date have been dismissed or withdrawn, does not prevent further applications being made.
11. Having said that, it is relevant to point out that Mr. Drew (on page D53 of the pitch 108 bundle) does accept that the notices served on the 24<sup>th</sup> September 2021 were 'late notices' i.e. he is not suggesting that the review date of 1<sup>st</sup> January 2021 has been changed.

**Time limits – relevant?**

12. If one looks at the **Mobile Homes Act 1983** as amended (“the 1983 Act”) and subsequent regulations, Mr. Drew would appear to be correct provided that the various time limits set out in the 1983 Act are complied with. One of those time limits is relevant to these applications.
13. The rules and time limits are set out in the 1983 Act in Schedule 1, Chapter 2. Sub-paragraph 17(4)(a) says that if an occupier does not agree to a pitch fee then an owner can apply to this Tribunal for it to determine the pitch fee. Sub-paragraph 17(5) says that “*An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date but no later than three months after the review date*”.
14. As is clear from the chronology above, the relevant review date is the 1<sup>st</sup> January 2021 and this is not disputed by Mr. Drew. These applications were made over a year later.
15. Sub-paragraph 17(9A) then says that a Tribunal may permit such an application to be made outside that 3 month period “*if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time*”.
16. The only reasons for the delays are that the Applicant failed to serve correct notices on the 20<sup>th</sup> November 2020 and then failed to make applications at the correct time on 12<sup>th</sup> November 2021.

**Does the dismissal of the 1<sup>st</sup> Applications stop the review process for that year?**

17. There is a technical problem here because of the wording of the notice to be served with the notices of increase. The notice is set out in the **Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013**. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents refer to this in their submissions. The precise wording is important.
18. In a section headed ‘The effect of the pitch fee review notice & making an application to the tribunal’, it says that if no agreement is reached and an application to this Tribunal is refused or withdrawn *“the proposed pitch fee cannot be charged, there are no arrears and the review process has ended for the year to which the notice refers”*.
19. The ordinary meaning of those words is clear i.e. that when the Tribunal heard the previous applications on the 24<sup>th</sup> August 2021 and then determined that the appropriate notices were defective and the review could not take place, the review process ended for the 2021 review. Furthermore, the withdrawal of the 2<sup>nd</sup> applications would have had the same effect if that review process had not already ended.
20. I acknowledge that this actual wording is not in the 1983 Act itself. However, the 1983 Act does require the prescribed form to be served. I cannot accept that it was not in the mind of the legislature, when approving the wording in the statutory instrument referred to above, that giving clear written notice to occupiers that the review ended when an application by a site owner to this Tribunal was refused or withdrawn was exactly what would happen on the facts of this case.

**Conclusions**

21. The Applicant’s behaviour has been severely criticised by the Respondents. They point out, as is the case, that the Applicant is an experienced site owner and should know better than to keep making mistakes in the review process for 2021.
22. I do not accept all of the critical comments made. However, I am puzzled as to why:
  - (a) There was no review in 2020
  - (b) The 1<sup>st</sup> notice served for the 2021 review was wrong when the wording had been imposed many years beforehand
  - (c) Both the 2<sup>nd</sup> Application and these applications were issued well over the 3 month time limit with no good reason having been given for the delay
  - (d) The 2<sup>nd</sup> applications were not issued at the correct time and had to be withdrawn
  - (e) There has apparently been no review commenced for the review date on the 1<sup>st</sup> January 2022
23. I am satisfied that the applications should be dismissed for 2 main reasons. Firstly they were made outside the 3 month time limit and no satisfactory and reasonable ‘good reason’ has been given for the delay. Mistakes made by an experienced site owner cannot be said to be good reasons.

24. Secondly, I am satisfied, having considered the relevant law and the representations of the parties, that both the dismissal of and the withdrawal of previous applications mean that the 2021 review was at an end on the 10<sup>th</sup> September 2021 i.e. when the previous dismissal decision was made.
25. I have also considered whether the rule in *res judicata* applies. This rule prevents anyone from asking a court or tribunal to make a decision about something which has already been considered and determined by another court or tribunal. On balance, I do not think that such rule applies as these applications are based upon an amended form of notice of review i.e. I am not being asked to consider the same facts as the previous Tribunal.
26. Finally, I have considered whether these applications are an abuse of process. As there have been 3 sets of proceedings relating to the same review date which have shown serious errors on the part of the Applicant, I consider that these applications are verging on being frivolous and vexatious. As far as proportionality is concerned, the worries of the Respondents in having to deal with all these applications do, in my view, seriously outweigh the increases in pitch fees which may have been lost during a time of relatively low inflation in 2021.



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**Judge Edgington**  
**8<sup>th</sup> June 2022**

### **ANNEX - RIGHTS OF APPEAL**

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.
- v.