



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

Case reference : CAM/22UN/PHI/2022/0017

Park Home Address : 16 Meadowview Park, St Osyth Road, Little Clacton, Essex CO16 9NT

Applicant : Wickland(Holdings) Limited

Representative : Fisher Jones Greenwood Solicitors

Respondent : Amelia Esterhuyse

Date of Application : 22 March 2022

Date Decision : 5 August 2022

Type of application : to determine the new pitch fee - paragraph 18 of Schedule 1 to the Mobile Homes Act 1983, as amended (“the Act”)

The Tribunal : Mary Hardman FRICS IRRV(Hons)

DECISION

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1. The Tribunal determines that the pitch fee for the pitch known as 16 Meadowview Park, St Osyth Road, Little Clacton, Essex CO16 9NT remains at £193.32 per month from 1 January 2022.

Reasons

Background

2. The Respondent, Ms Esterhuyse, is the occupier of the park home at 16 Meadowview Park, St Osyth Road, Little Clacton, Essex CO16 9NT.
3. Ms Esterhuyse has not agreed to an increase in pitch fees for 2022. The site owner must therefore apply to this Tribunal if it is to obtain an increase in pitch fee. The annual review date for pitch fees is 1 January 2022 as set out in the occupation agreement.

4. On the 26 November 2021 notice of the proposed new pitch fee, in the prescribed form, was served on the respondent, explaining that as from the 1 January 2022 the pitch fee would be increased by 6% in line with RPI for December 2021, in accordance with the Office for National Statistics RPI All Items table.
5. An application dated 22 March 2022 was made to the Tribunal for determination of a new level of pitch fee. The Tribunal issued a directions Order on 17 May 2022 saying that the Tribunal proposed to deal with this application by considering the papers only, without a hearing, and would do so on or after 12 July 2022 unless any party requested an oral hearing which would then be arranged.
6. No such request was received.

The Occupation Agreement

7. A copy of the original agreement has been provided by the Applicant
8. The tenancy agreement is between Wickland (Holdings) Limited and Ms Esterhuyse and commenced on 9 March 2017.

The Law

9. Paragraph 20 of the Implied Terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 states that – unless it would be unreasonable to do so – it is presumed that the pitch fee will be adjusted annually by reference to the percentage increase or decrease in the Retail Prices Index based on the difference between the latest index and that published for the month 12 months prior to the month to which the index relates.
10. The site owner must give the occupier written notice accompanied by a prescribed Pitch Fee Review Form. The Tribunal notes that the prescribed forms have been used in each case and the relevant time limits have been complied with.
11. Paragraph 18 (1) Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983 of requires that

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 appropriate judicial body, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;*

- (aa) in the case of a protected site in England, any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or*

- controlled by the owner since the date on which this paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this subparagraph);*
- (ab) in the case of a protected site in England, any reduction in the services that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this subparagraph);*
12. Upon application, the Tribunal must determine two things. Firstly, that a change in the pitch fee is reasonable and, if so, it must determine the new pitch fee.

The Respondent's case

13. The Respondent says that she bought her home in 2017. Within two months she found water leaking beneath the home and into her shed. The foundation concrete base was damaged and cracked.
14. In 2018 the concrete base was repaired but was a 'botched backyard job' using the gardener from the park working on his own. The home was moving and shifting and not levelled and had caused damage that was ongoing. She had asked the council for assistance.
15. In 2019 the council served a compliance order on the landlord. This was unsuccessfully appealed, and he was ordered to repair the foundation by January 2020.
16. This did not happen due to COVID. In June 2021 she complained again of water leakage and mould infestation which was affecting her health.
17. There were also issue with the drain and waste pipes which she believes were caused by the use of a hydraulic drilling machine to remove outer parts of the cement.
18. She had contacted the council again in March 2022 and they had agreed with the site owner in respect of repairs which were to be carried out in May 2022, which was then changed to July 2022.

The Applicant's case

19. The Applicant submitted a statement of case dated 9 June 2022 and a witness statement and exhibits, also dated 9 June 2022.
20. The Applicant was seeking a determination that the pitch fee for the subject property should be increased by RPI (6%) as set out in Paragraph 20 of the Implied Terms set out in Chapter 2, Part 1 of Schedule 1 to the Mobile Homes Act 1983.

21. The witness statement of Mr Leonard Collins, consultant for Wickland (Holdings) Limited (the Applicant) , said that he dealt with the administration of the park.
22. He accepted that the Respondent's hardstanding required repair although he did not accept that the current condition of the hardstanding was causing any issue to the Respondent's peaceful occupation of the park.
23. He accepted that the local authority had served a Compliance Notice on 22 November 2019 which required them to instruct a structural engineer to undertake an inspection of the hardstanding, and to effect the remedial works recommended to be carried out. However, the survey and remedial works would require the Respondent's mobile home to be lifted from the hard standing while the works were undertaken.
24. Due to illness of the Respondent and the impact of COVID-19 there had been delays in facilitating these works which are likely to take a number of weeks. The works were due to commence on 10th July 2022 and they were liaising with the Respondent with regard to the scope of the works. This would need to include payment to enable the Respondent to secure alternative accommodation for the duration of these works.
25. They did not believe that the above-mentioned issues with regard to the Respondent's hard standing should impact the pitch fee review undertaken pursuant to the RPI increase.
26. Furthermore, they believed that issues that the Respondent had experienced with moisture, humidity and mould were due to the Respondent cladding her home in 2017 in plastic type cladding which had covered the air vents and impaired the breathing function of the original exterior wall.
27. They had investigated the leak which the Respondent complained of by removing parts of the brickwork skirt under the home but had found no evidence of a leak.
28. In respect of the drain and waste pipe connections and alleged cracking thereto, these were the responsibility of the Respondent but they had not found any leaks. They did not believe these should impact on the pitch fee review

Discussions and Determination

29. The Tribunal has considered the submissions filed by both parties.
30. The Tribunal is firstly required to consider whether the change to the pitch fee complies with the statutory requirements.
31. The Respondent has not taken any issue with the review date or the notice procedure and the Tribunal find that this accorded with the required statutory procedure.

32. For the purposes of the 1983 Act, the Tribunal must then consider whether what Ms Esterhuyse complains of constitutes a deterioration/decrease in the condition or amenity of the park.
33. If it did find that there has been any deterioration/decrease in the condition or amenity of the park, then it must decide whether it would be unreasonable for the pitch fees to be increased on the basis of the increase in the retail prices index.(RPI)
34. Ms Esterhuyse provides evidence of cracking to the base and submits that there are a number of other issues as set out above.
35. The Compliance Notice from the local authority in 2019 and the more recent correspondence between the local authority and the Applicant, the latter evidenced in the Applicant's bundle, confirm that cracking to the base is an issue that needs remedying. This is the responsibility of the landlord and remedying this will need the Respondent to move out whilst it is done and find her own accommodation elsewhere – albeit with some monetary payment from the Applicant.
36. The Applicant accepts that the hardstanding requires repair and that this has been the case since 2019 when the local authority served the Compliance Notice.
37. In Vyse v Wyldecrest Ltd [2017] UKUT 24 (LC) HHJ Alice Robinson noted [at 45] that: “...the factors which may displace the presumption are not limited to those set out in paragraph 18(1) but may include other factors...” and said [at 50] that: “...By definition, this must be a factor to which considerable weight attaches ... it is not possible to be prescriptive ... What is required is that the decision maker recognises that the “other factor” must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.”
38. In this case, notwithstanding the responsibility for other defects complained of, the landlord has accepted that repairing the cracked base is their responsibility. As at 1 January 2022 they had failed to repair it. It is clearly causing Ms Esterhuyse distress and worry and goes to the heart of her enjoyment of her occupation of the park.
39. The tribunal finds that this is a factor to which, in this case, considerable weight attaches and outweighs the presumption that the pitch fee will increase by the RPI.
40. On that basis the tribunal finds that the pitch fee should remain at **£193.32 per month** with effect from 1 January 2022.

Mary E Hardman FRICS IRRV(Hons)

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.