



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

Case reference : CHI/00HG/PHI/2022/0077

Property : 5 Sycamore Way, Glenholt Park,
Glenfield Road, Plymouth, PL6 7NQ

**Applicant
Site Owners** : The Berkeley Leisure Group

Representative : Mr Stephen Drew

**Respondent
Park Home Owner** : Mrs Margaret Knight

Representative :

Type of application : Determination of new pitch fee
Mobile Homes Act 1983

Tribunal member(s) : Mrs J Coupe FRICS

Date of decision : 7 February 2023

DECISION

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Summary of the Decision

The Tribunal determines that the Applicant may increase the Respondent's current pitch fee to £142.55 per month with effect from 1 April 2022.

The reasons for the Tribunal's decision are set out below.

REASONS

Background

1. On 16 February 2022, the Applicant site owner served a Pitch Fee Review Notice on the Respondent proposing an increase in pitch fee from £132.24 per month to £142.55 per month with effect from 1 April 2022.
2. The Respondent did not accept the review and continued to pay the pitch fee at the rate of £132.24 per month.
3. On 27 June 2022, the Applicant site owner sought a Tribunal determination of the revised pitch fee of £142.55 per month, with an effective date of 1 April 2022.
4. Paragraph 29 of Schedule 1, Chapter 1 of the Mobile Homes Act 1983 defines the review date as: *"the date specified in the written statement as the date on which the pitch fee will be reviewed in each year, or if no such date is specified, each anniversary of the date the agreement commenced; ..."*
5. The Applicant is unable to provide a copy of the written agreement. Accordingly, the Tribunal required the Applicant to provide evidence that the review date is 1 April each year or that the agreement has been varied, or that the Respondent knowingly agreed to the date specified.
6. Following service by the Tribunal of a Minded to Strike out Notice on 30 September 2022, the Applicant emailed the Tribunal on 14 October 2022 providing a witness statement with documentation which sought to demonstrate why the Applicant believes the review date to be valid. The email was copied to the Respondent.
7. The Applicant stated that pitch fees on this site are generally reviewed annually on 1 April, as confirmed by the previous site owners, and, further, that the Respondent had increased her pitch fee on 1 April 2021 in line with the applicable increase in the Retail Price Index ('RPI').
8. The Respondent made no representations on the point.
9. On 28 October 2022, the Tribunal issued Directions accepting a review date of 1 April on the basis of there being no written agreement stating otherwise, the witness statement of the Applicant, and there being no representations from the Respondent.

10. The Directions of 28 October 2022 advised the parties that the application would be determined on the papers unless a party objected within 28 days. The Tribunal received no objections.
11. The Tribunal accepted the application and accompanying witness statement as the Applicant's case. The Respondent was required, by 18 November 2022, to advise the Applicant whether she agreed or opposed the proposed increase. If opposed, the Respondent was required to file a statement of case and serve it on the Applicant for inclusion in the bundle. The Applicant was provided with the right of a brief reply.
12. By 9 December 2022, the Applicant was required to prepare and submit to the Tribunal, copied to the Respondent, the determination bundle. The bundle, extending to 35 pages, was duly served.
13. References in this determination to page numbers in the bundle are indicated as [].
14. The bundle contained no representations from the Respondent. The Applicant, in the witness statement of Stephen Drew, advised that "*The Respondent has not received documentation from the Respondent*" [34], by which the Tribunal assumes the Applicant to mean that they, and not the Respondent, had received no documentation from the Respondent.
15. The Respondent has not responded to the application and has taken no part in the proceedings.
16. The Tribunal has reviewed the papers and is satisfied that the matter remains suitable for a paper determination.
17. Glenholt Park is a residential mobile home park for owners aged fifty and over. The site provides two hundred and sixty occupied pitches. Glenholt Park is governed by a licence issued by Plymouth City Council dated 29 September 2003 [19].
18. Neither of the parties sought to persuade the Tribunal that an inspection of the property was necessary or appropriate. The Tribunal concluded that the issues could be determined fairly, justly and efficiently on the material available without such an inspection, consistent with the overriding objective of the Tribunal. However, the property and locality were viewed online by the Tribunal via publicly available digital platforms

The Law

19. The relevant law is set out in the Mobile Homes Act 1983 ("the Act"), as annexed to this decision.
20. Under the Act, terms are implied into all agreements to which the Act applies. Those implied terms are set out in Chapter 2 of Part 1 of Schedule 1 of the Act.
21. The relevant terms for the purposes of a pitch fee review are set out at paragraphs 16-20 of that part of the Schedule. A review of a pitch fee is

governed by three statutory principles:

- i. The pitch fee can only be changed either with the agreement of the occupier or by determination by the Tribunal;
 - ii. The pitch fee shall be reviewed annually as at the review date;
 - iii. A presumption that the fee will increase or decrease in line with the variation in the Retail Price Index (“RPI”).
22. Paragraph 18 requires the Tribunal, in determining the new pitch fee, to have regard to particular factors:
- i. Any sums expended by the site owner since the last review date on improvements;
 - ii. Any deterioration in the condition and any decrease in the amenity of the site;
 - iii. Any reduction in the services provided by the site owner and any deterioration in the quality of those services;
 - iv. Any legislative changes affecting costs.

Discussion and Determination

The Applicant

23. The Applicant acquired Glenholt Park in January 2020.
24. The written agreement, or assignment thereof, under which the Respondent occupies the home was not provided by either party.
25. In the absence of the agreement and for reasons already explained, the Applicant avers the date of the annual pitch fee review to be 1 April.
26. On 16 February 2022, the Applicant issued a Notice of Pitch Fee Review proposing an increase in pitch fee from £132.24 to £142.55 per month with effect from 1 April 2022.
27. The proposed increase in pitch fee amounted to 7.8% and was calculated in accordance with the percentage change in the Retail Price Index for the twelve month period ending in January 2022 [28].
28. In its application, the Applicant indicated that none of the statutory allowances in paragraph 18 of Chapter 2 of Part 1 of Schedule 1 of the Act apply in this matter. Accordingly, the pitch fee review is governed by an increase or decrease in line with the variation in the RPI for the appropriate period.
29. In continuing to pay a pitch fee of £132.24, the Applicant is aware that the Respondent does not accept the reviewed fee. However, the Respondent

has submitted no documentation to the Applicant in support of her position.

30. The Applicant therefore contends that the pitch fee has been reviewed in accordance with statute and, by applying the RPI increase for the twelve month period ending January 2022, the appropriate revised monthly fee is £142.55 payable from 1 April 2022.

The Respondent

31. No submissions were made by the Respondent.

The Tribunal

32. The Tribunal has considered the Applicant's pitch fee review documentation, evidence and submissions. The Tribunal is satisfied that the Applicant was entitled to serve the Respondent with a notice of increase and that valid documentation has been served within the correct timescale.
33. The Tribunal is satisfied that the RPI increase, calculated as at January 2022, was 7.8%.
34. The Respondent advanced no grounds as to why the statutory presumption in favour of the RPI representing the increase in the pitch fee should be displaced or any challenge to the calculation of the reviewed fee in line with the RPI for January 2022. Nor has the Respondent challenged the validity of the Applicant's pitch fee review documentation or its timely service.
35. Further, the Tribunal is satisfied that no evidence of any other factors relevant to a pitch fee review have been advanced by the Respondent.
36. The Tribunal determines that the proposed increase in pitch fee is calculated in accordance with the Act.
37. The Tribunal determines that the Respondent is required to pay a pitch fee of £142.55 per month, with effect from 1 April 2022 until further review.

RIGHTS OF APPEAL

1. 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 to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex: The Law

Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983

The pitch fee

16

The pitch fee can only be changed in accordance with paragraph 17, either—

- (a) with the agreement of the occupier, or
- (b) if the appropriate judicial body, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17

(1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(2A) In the case of a protected site in England, a notice under sub-paragraph (2) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

(a) the owner or (in the case of a protected site in England) the occupier may apply to the appropriate judicial body 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 the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and

(c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.

(5) 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, in the case of an application in relation to a protected site in England, no later than three months after the review date.

(6) Sub-paragraphs (7) to (10) apply if the owner—

(a) has not served the notice required by sub-paragraph (2) by the time by which it

was required to be served, but

(b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

(6A) In the case of a protected site in England, a notice under sub-paragraph (6)(b) which proposes an increase in the pitch fee is of no effect unless it is accompanied by a document which complies with paragraph 25A.

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(8) If the occupier has not agreed to the proposed pitch fee—

(a) the owner or (in the case of a protected site in England) the occupier may apply to the appropriate judicial body 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 the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the appropriate judicial body under paragraph 16(b); and

(c) if the appropriate judicial body makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b) but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice.

(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) in relation to a protected site in England to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) 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.

(10) The occupier shall not be treated as being in arrears—

(a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or

(b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the appropriate judicial body's order determining the amount of the new pitch fee.

(11) Sub-paragraph (12) applies if a tribunal, on the application of the occupier of a pitch in England, is satisfied that—

(a) a notice under sub-paragraph (2) or (6)(b) was of no effect as a result of sub-

paragraph (2A) or (6A), but

(b) the occupier nonetheless paid the owner the pitch fee proposed in the notice.

(12) The tribunal may order the owner to pay the occupier, within the period of 21 days beginning with the date of the order, the difference between—

(a) the amount which the occupier was required to pay the owner for the period in question, and

(b) the amount which the occupier has paid the owner for that period.

18

(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 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 sub-paragraph);

(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 sub-paragraph);

(ba) in the case of a protected site in England, any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date;

(1A) But, in the case of a pitch in England, no regard shall be had, when determining the amount of the new pitch fee, to any costs incurred by the owner since the last review date for the purpose of compliance with the amendments made to this Act by the Mobile Homes Act 2013.

(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

19

(1) When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

(2) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.

(3) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any fee required to be paid by the owner by virtue of—

(a) section 8(1B) of the Caravan Sites and Control of Development Act 1960 (fee for application for site licence conditions to be altered);

(b) section 10(1A) of that Act (fee for application for consent to transfer site licence).

(4) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in connection with—

(a) any action taken by a local authority under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 (breach of licence condition, emergency action etc);

(b) the owner being convicted of an offence under section 9B of that Act (failure to comply with compliance notice).

20

(A1) In the case of a protected site in England, unless this would be unreasonable having regard to paragraph 18(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 calculated by reference only to—

(a) the latest index, and

(b) the index published for the month which was 12 months before that to which the latest index relates.

(A2) In sub-paragraph (A1), “the latest index”—

(a) in a case where the owner serves a notice under paragraph 17(2), means the last index published before the day on which that notice is served;

(b) in a case where the owner serves a notice under paragraph 17(6), means the last index published before the day by which the owner was required to serve a notice under paragraph 17(2).

(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.

25A

(1) The document referred to in paragraph 17(2A) and (6A) must—

(a) be in such form as the Secretary of State may by regulations prescribe,

(b) specify any percentage increase or decrease in the retail prices index calculated in accordance with paragraph 20(A1),

(c) explain the effect of paragraph 17,

(d) specify the matters to which the amount proposed for the new pitch fee is attributable,

(e) refer to the occupier's obligations in paragraph 21(c) to (e) and the owner's obligations in paragraph 22(c) and (d), and

(f) refer to the owner's obligations in paragraph 22(e) and (f) (as glossed by paragraphs 24 and 25).

The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013

Application, citation and commencement

1. These Regulations, which apply in relation to England only, may be cited as the Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013 and come into force on 26th July 2013.

Pitch fees: Prescribed form

2. The document referred to in paragraph 17(2A) and (6A) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 shall be in the form prescribed in the Schedule to these Regulations or in a form substantially to the like effect.