



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

Case Reference : BIR/00FP/PHI/2022/0048

Property : 19 Lonsborough Gardens, Langham, Oakham, LE15 7SA

Applicant : Oakham Grange Limited (Site Owner)

Representative : Royale Life

Respondents : Mr Peter E. Hornby and Mrs Pamela A. Hornby

Type of Application : Application for determination of new level of pitch fee under Mobile Homes Act 1983, Schedule 1, Part 1, Chapter 2, para.16.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
Judge M.K. Gandham

Hearing : None. Paper Determination.

Date of Decision : **16 February 2023**

DECISION

DECISION

- 1 The Pitch Fee is determined at £163.48 per calendar month with effect from 1 April 2022.

REASONS

Introduction

- 2 The Applicant, Oakham Grange Limited, is the site owner. The Respondents are Mr and Mrs P.E. Hornby, the occupiers of a plot on a mobile home park known as 19 Lonsborough Gardens, Langham, Oakham, LE15 7SA.
- 3 The Respondents are Assignees of a Mobile Home Pitch agreement granted to A.J. White and E.J. James in March 2007 when the pitch fee was agreed at £134.80 per month. It was subsequently increased and at the last review on 1 April 2021 it was agreed at £154.23 per month.
- 4 On 25 February 2022 the Applicant served Notice of Increase under The Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations 2013, proposing a new pitch fee of £163.48 per month from 1 April 2022.
- 5 The Respondents objected.
- 6 On 30 June 2022 the Applicants applied to the First-tier Tribunal (Property Chamber) for the fee to be determined by the Tribunal.
- 7 The Tribunal issued Directions Order No.1 to the parties on 13 July 2022 and received a Submission from the Respondents. The Tribunal met on 22 September 2022 but, as facts remained unclear, the Tribunal issued Directions Order No.2. The Tribunal reconvened on 17 November 2022 but, as facts remained unclear, the Tribunal issued Directions Order No.3, requiring any further submissions to be made by 19 December 2022.
- 8 The Tribunal has since re-convened, considered the points raised by the parties and finds as follows.

The Law

- 9 The Mobile Homes Act 1983 ('the Act'), Schedule 1, Part 1, paragraphs 16,18 and 20 contain the following provisions:
 - 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.
 - 18 (1) When determining the amount of the new pitch fee particular regard shall be had to-
 - (aa) 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 ...

- (ab) 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 ...

20(A1) [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 price 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.

- 10 These provisions are repeated in the Written Statement which is the agreement between the parties setting out the terms of the contract, dated 15 October 2008. They are in Part 3 of the Agreement ('Implied Terms') at paragraphs 16 to 20.

Facts Found

- 11 The Tribunal has not inspected the site and, as the parties have not requested a Hearing, it relies on the Written Statement provided by the Applicant, which has not been contested, and all of the other evidence presented to it in making this decision.

Submissions

- 12 Applicant

The Applicant did not send a Submission but included a copy of the Notice of Increase dated 25 February 2022, the accompanying Pitch Fee Review Form and Written Statement under the Mobile Homes Act 1983 with the application to the Tribunal.

The Applicant's proposal is based on the presumption in paragraph 20 with regard to the increase in Retail Price Index since the fee was last reviewed on 1 April 2021.

- 13 Respondents

The Respondents had asked the Applicant to address three concerns as a condition of agreeing the increase, although it is understood that their conditions had been neither accepted nor met. These were:

- 1 Paving

A section of the block paving in their drive needed repair. The surface was uneven and the kerb stones were falling away, evidenced by a photograph sent to the Tribunal. They considered it had probably been caused by tree roots, which they claimed were the Applicant's responsibility.

In reply, the Applicant said it was not responsible for trees within individual plots and refused to take any remedial action.

- 2 Public Access

Holiday makers from an adjoining park were regularly gaining access to the estate roads within the development and causing a nuisance. Random walkers, children on bicycles, scooters and dogs were all using the estate roads and upsetting the Respondents' quiet enjoyment of the park. Some residents had put up signs in the park advising third parties that they had no right of access that had been removed by the Applicant.

In response, the Applicant was sympathetic but said they were unable to take any action to prevent unauthorised access by third parties at all times.

3 Drain Cover

A drain cover in the estate road by the entrance to the park was uneven and claimed to be sinking into the tarmac. It left the road surface uneven and was a trip hazard.

In response, the Applicant had levelled the surface as a temporary repair and, by email dated 22 June 2022, said their contractors would attend to repair it 'hopefully by the end of next week'.

Decision

- 14 The Tribunal carefully considered the points raised by the parties in reaching their decision.
- 15 The Tribunal is satisfied that the proposed percentage increase in the pitch fee was for no more than the percentage increase in the retail prices index, in accordance with paragraph 20 of Schedule 1 to the Act. The Retail Price Index (RPI) published in February 2022 was 7.8%, being the January RPI figure (although the Notice and prescribed form referred to this as the figure published 'for' February, the Tribunal is satisfied that this was simply a typographical error). The Tribunal also notes that, despite the presumption being for an increase of the pitch fee by a percentage of up to 7.8%, the Applicant chose to increase the pitch fee by a lower percentage, being 6%.
- 16 The question for the Tribunal is whether any of the points raised by the Respondents could reasonably be said to have reduced the condition or amenity of the park or services provided to the pitch within the meaning of paragraph 18, sufficient to override the presumption of increase in paragraph 20.
- 17 In respect of the first point, the condition of the block paving within the pitch, the Respondents say that the tree causing the damage is on a neighbouring plot. This appears to the Tribunal to be correct from photographs submitted to it. The Tribunal also considers that, from the proximity of the tree roots to the drive, that they are likely to have caused the damage to the paving. The Applicant, in a letter to the Respondents on 2nd March 2022, said 'I understand that the tree that is causing the bricks to lift is not yours, and I have checked with your neighbour who confirms the tree is not theirs either'. As the tree is neither the Respondents' nor their neighbours' responsibility, it appears to the Tribunal that it is probably the site owner's responsibility under paragraph 22(d) of the Implied Terms, by which the site owner agrees to 'maintain ... site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site'. However, as the Applicant has requested an increase less than calculated under the presumption on paragraph 20 of the Implied Terms, the Tribunal does not consider the condition of the damaged paving to be sufficient to justify a reduction in the site fee on this occasion. This decision does not affect the liability of any party in relation to rectifying any damage caused by the tree roots.
- 18 The second point, access to the estate roads by third parties, would be difficult to prove and police and, even if it led to a reduction in amenity, there is no evidence before the Tribunal to indicate that such access had not always been made by members of the public since the park opened. As such, the Tribunal is unable to assess this as a decrease in amenity, even if it is unfortunate.

- 19 The third point has been conceded by the Applicant and hopefully repaired as indicated by their email of 22 June 2022. However, even if not repaired, it is some distance from the Respondents' plot and the Tribunal finds it insufficient on its own to qualify as a reduction in the park's amenity.
- 20 The Tribunal are therefore left with the presumption in paragraph 20 of the Implied Terms, that the pitch fee can be increased by a percentage no more than the increase in the Retail Price Index since 2021 and, accordingly, determines the pitch fee at £163.48 per month with effect from 1 April 2022.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date

Appeal Procedure

If the Applicant is dissatisfied with this Decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days of the date these Reasons have been sent to the Applicant [rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013].

If the person wishing to appeal does not comply with the 28 day time limit, they shall include with the application for permission to appeal a request for an extension of time and the reason for not applying within the 28 day time limit. The Tribunal will then decide whether or not to extend the time limit to allow the application for permission to appeal to proceed.

The application must identify the Tribunal decision to which it relates, state the grounds of appeal and the result the party making the application is seeking.