FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UN/PHI/2022/0017**
Property	**:**	**16 Meadowview Park, St Osyth Road, Little Clacton, Essex CO16 9NT**
Applicant	**:**	**Wickland (Holdings) Limited**
Respondent	**:**	**Amelia Esterhuyse**
Application	**:**	**Application for permission to Appeal**
Tribunal members	**:**	**Mary Hardman FRICS IRRV(Hons)**
Date of Decision	**:**	**15 November 2022**

DECISION REFUSING PERMISSION TO APPEAL

Decision

1. The tribunal has considered the applicant's request for permission to appeal dated 2 September 2022 and determined that:
    a. it will not review its decision dated 5 August 2022: and
    b. permission be refused.

2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, Wickland (Holdings) Limited may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

3. Where possible, any further application for permission to appeal should be sent **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

Original Application

4. The Original Application was made on 22 March 2022 by Wickland (Holdings) Limited, for the determination of a new level of pitch fee following service of a notice in the prescribed form by the landlord on 26 November 2021.

5. The landlord's notice proposed a new pitch fee of £204.92 per calendar month to be effective from 1 January 2022. This was in lieu of the £193.32 per month, the latter being adjusted by the RPI for December 2021 of 6% to arrive at the new pitch fee.

6. On 5 August 2022 the tribunal determined that the pitch fee should remain at £193.92 per month.

Reasons for the decision

7. The tribunal has decided not to review its Decision and refuses permission to appeal to the Upper Tribunal because it is of the opinion that there is no realistic prospect of a successful appeal in this case.

8. The tribunal did not wrongly interpret or wrongly apply the relevant law or take into account irrelevant considerations or fail to take account of relevant consideration or evidence.

9. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (should a further application for permission to appeal be made), the tribunal has set out its comments on the specific points raised in the requests for permission to appeal.

REFUSING PERMISSION TO APPEAL

10. For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the tribunal records below its comments on the grounds of appeal, set out in the same order as in the Landlord letter seeking permission to appeal.

Ground 1: The tribunal erred in fact when determining that the base was cracked since 2019

11. The applicant states in their appeal that 'there is no, or insufficient evidence that the hardstanding was cracked or otherwise damaged'

12. The tribunal notes that limited evidence was provided in the very brief witness statements in the applicant's bundle, which they appear to be trying to expand on significantly in their grounds of appeal.

13. The tribunal was sufficiently persuaded by the evidence provided by Ms Esterhuyse and in particular by the compliance notice served by the council in 2019 that stated that the applicant had failed to comply with licence condition number 5 – Caravan Hardstanding. The details of the failure to comply with the condition stated.' Remedial work to repair a cracked base under the caravan at the aforementioned address have been carried out in a substandard manner. The existing hard standing/base has substantial cracking through the middle and the remedial work carried out consists only of new concrete to the outside edges of the base (approximately 1 metre) only. The centre of the existing concrete hard standing has had a sheet of reinforcing laid on top of the crack. Shuttering form work has been built around this area and concrete has been poured to strengthen the hardstanding/ base. Due to the extent of the cracking and the presence of tree roots in the vicinity, the remedial works are not sufficient to prevent further issues with the hardstanding/ base in the future.

14. The applicant does not produce any evidence or suggest that the further works they agreed to do to the base were carried out subsequent to this but in advance of the review date, being delayed by COVID and finally scheduled for July 2022.

15. The tribunal accepts that, whilst there may not have been photographs of the base in 2021/2022, it would be absurd to assume that the issues with the base would not still be present in the absence of any remedial action and right to assume that it would be in a similar state at the date of the review on 1 January 2022.

Ground 2: The tribunal erred in fact/and or in law in determining that there had been a deterioration/decrease in the amenity of the site

16. There was no suggestion by the applicant that regard had previously been had to the deterioration/reduction for the purpose of paragraph 18(1), so the relevant

question was not any change in the condition of the base since 1 January 2021, but since paragraph 18(1) came into force (26 May 2013).

17. Further, the relevant matters do not necessarily fall within paragraph 18; as noted at [37] and [39], the factors which may displace the RPI presumption are not limited to those in paragraph 18(1) the condition of the base and the delays in compliance with the compliance notice given in 2019 were a significant factor in arriving at the decision.

Ground 3 – The Tribunal erred in law and/or in the exercise of its discretion when applying the test as it failed to consider that 'unless this would be unreasonable' the presumed RPI linked increase in pitch fee should be allowed and/or placed too much weight on any alleged defect in the hard standing

18. [12} in the decision should not be read in isolation, because it is summarising paragraph 16 of the implied terms, which provides that the pitch fee can only be changed with the agreement of the occupier or if the tribunal considers it "reasonable" for the pitch fee to be changed and determines what the new fee should be.

19. The tribunal considered this, taking into account the other relevant implied terms, including the presumption in paragraph 20 that unless it would be unreasonable having regard to paragraph 18(1) the pitch fee shall change in line with RPI.

20. This is explained in some detail in Vyse v Wyldecrest Ltd, which concludes as noted at [37]. The tribunal decided that the factor identified in [38] had sufficient weight to outweigh the presumption (i.e., that it had sufficient weight that it would be unreasonable to increase the pitch fee payable from 1 January 2022 in line with RPI or at all).

Mary Hardman
Regional Surveyor
15 November 2022

ANNEX - RIGHTS OF APPEAL

As the application for permission to appeal the decision is refused, an application for permission to appeal against that refusal may be made to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. An application to the Upper

Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which the First-tier Tribunal sent you the refusal of permission.