



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

Case Reference : CHI/18UE/PHI/2023/0023

Property : 36 Tranquility Park, Station Road,
Woolacombe, Devon, EX34 7AN

Applicant : Wyldecrest Parks (Management) Ltd

Representative :

Respondent : Paul Stockham
Beverley Stockham

Representative :

Type of Application : Review of Pitch Fee: Mobile Homes Act
1983 (as amended)

Tribunal member : D Banfield FRICS, Regional Surveyor

Date of Decision : 16 May 2023

DECISION

Background

1. On 30 January 2023 the Applicant site owner sought a determination of the pitch fee of £308.56 per month payable by the Respondents as from 1 January 2023.
2. A Pitch Fee Review Notice dated 23 November 2022 was served on the Respondents proposing to increase their pitch fee by an amount which the site owner says represents only an adjustment in line with the Retail Price Index.
3. On 2 March 2023 the Tribunal directed the Application to be determined on the papers without an oral hearing unless a party objected within 28 days. No objections were received from the parties.
4. The Directions provided that the application form and accompanying papers should stand as the Applicant's statement of case.
5. Respondents were invited to prepare a statement indicating whether they agreed or disagreed with the application however no response was received.
6. In the Applicant's Statement dated 27 March 2023 is a description of the process followed, reference to a letter from the Respondents dated 12 December 2022 objecting to an increase in the pitch fee and applications for £100 wasted costs under Rule 13(1) and reimbursement of the application fee of £20 under Rule 13(2)

Consideration

7. Tranquility Park is a protected site within the meaning of the Mobile Homes Act 1983 (the 1983 Act). The definition of a protected site in Part 1 of the Caravan Sites Act 1968 includes a site where a licence would be required under the Caravan Sites and Control of Development Act 1960 if the exemption of local authority sites were omitted.
8. Mr and Mrs Stockham's right to station their mobile home on the pitch is governed by the terms of their Written Agreement with the Applicant and the provisions of the 1983 Act.
9. The written agreement commenced on 24 November 2021. Under paragraph 7 of the agreement Mr & Mrs Stockham are obliged to pay the pitch fee to the Applicant monthly by Direct Debit. Paragraph 8 states that the pitch fee would be reviewed on 1 January every year.
10. The Applicant served the Respondents with the prescribed form proposing the new pitch fee on 23 November 2022 which was more than 28 days prior to the review date of 1 January 2023. The Application to the Tribunal to determine the pitch fee was made on 30

January 2023 which was within the period starting 28 days to three months after the review date. The form indicated that the Applicant had applied the RPI of 14.2 per cent as published in October 2022 which was the latest published 12-month RPI figure available before the notice of review was served.

11. The Tribunal is satisfied that the Applicant has complied with the procedural requirements of paragraph 17 of Part 1 of Schedule 1 of the 1983 Act to support an application for an increase in pitch fee in respect of the pitch occupied by the Respondents.
12. The Tribunal is required to determine whether the proposed increase in pitch fees is reasonable. The amount in issue was £38.37 per month. The Tribunal is not deciding whether the overall level of pitch fee is reasonable.
13. The Tribunal is required to have regard to paragraphs 18, 19 and 20 of Part 1 of Schedule 1 of the 1983 Act when determining a new pitch fee. Paragraph 20(1) introduces a presumption that the pitch fee shall increase by a percentage which is no more than any percentage increase or decrease in the RPI since the last review date.
14. The Applicant has restricted the increase in pitch fee to the percentage increase in the RPI and in view of the presumption referred to in paragraph 25 above, the Tribunal finds that the proposed increase in pitch fee is reasonable.

Decision

15. Given the above the above circumstances the Tribunal determines that the proposed increase in pitch fee for 36 Tranquility Park, Woolacombe Station Road, Woolacombe, Devon EX34 7AN is reasonable and determines a pitch fee of **£308.56 per month with effect from 1 January 2023.**

Costs

Rule 13(1)

16. Rule 13(1)(a) gives effect to section 29(4) of the Tribunal Courts and Enforcement Act 2007 which provides that the relevant Tribunal may disallow or order a representative to meet the whole or part of any wasted costs.
17. Although the Applicant refers to wasted costs clearly this does not apply as such an Order can only be made against a “representative”
18. Rule 13(1)(b) however allows the Tribunal to make an order for costs if a person has acted unreasonably in bringing, defending, or conducting proceedings in –
 - an agricultural land and drainage case, or
 - a residential property case, or

- a leasehold case
19. The case of Willow Court Management Company (1985) Ltd v. Alexander [2016] UKUT 290 (LC) gives guidance as to how the Tribunal should exercise its discretionary powers as;

“At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged, and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.”
 20. To satisfy the first stage as referred to in Willow Court the Tribunal must determine that the Respondent’s actions by not engaging with the proceedings were unreasonable and without reasonable explanation. Whilst such lack of action may have deprived the Respondent the opportunity of assisting the Tribunal in making its determination such action is not without explanation and as such the Tribunal finds that it does not meet the requirements of the first stage “test” and the application is refused.

Rule 13(2)

21. Given the Respondent’s failure to engage with these proceedings the Tribunal is minded to order the Respondent to reimburse the Applicant with the Tribunal application fee of £20. This order will take effect unless the Respondents make representations in writing to the Tribunal on why she should not reimburse the fee by **30 May 2023**.

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.

